

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

www.coastal.ca.gov

Th7

CENTRAL COAST DISTRICT (SANTA CRUZ) DEPUTY DIRECTOR'S REPORT

For the

November Meeting of the California Coastal Commission

MEMORANDUM

Date: November 16, 2006

TO: Commissioners and Interested Parties
FROM: Charles Lester, Central Coast District Deputy Director
SUBJECT: *Deputy Director's Report*

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the Central Coast District Office for the November 16, 2006 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast District.

REGULAR WAIVERS

3-06-056-W Mike & Sally Canan (Pacific Grove, Monterey County)

DE MINIMIS WAIVERS

3-06-058-W Chris Shake (Monterey, Monterey County)

EXTENSION - IMMATERIAL

3-02-024-E1 Ocean Harbor House Homeowners Association (Monterey, Monterey County)

<i>TOTAL OF 3 ITEMS</i>

DETAIL OF ATTACHED MATERIALS

REPORT OF REGULAR WAIVERS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13250(c) and/or Section 13253(c) of the California Code of Regulations.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-06-056-W Mike & Sally Canan	Demolish an existing two-story duplex; construct a new single family residence.	802 Mermaid Avenue, Pacific Grove (Monterey County)

REPORT OF DE MINIMIS WAIVERS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 30624.7 of the California Coastal Act of 1976.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-06-058-W Chris Shake	Remove existing two-story fish market building. Construct new two-story multi-use building (gift shop on the first floor; storage and office space on the second floor).	40 Fisherman's Wharf No. 1, Monterey (Monterey County)

REPORT OF EXTENSION - IMMATERIAL

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-02-024-E1 Ocean Harbor House Homeowners Association	Request to extend coastal development permit for underpinning of seaward spread foundations with reinforced concrete piers; removal of existing riprap revetment; relocation of existing sewer line; construction of an approximately 585-foot-long reinforced concrete vertical seawall; and relocation of storm water pipes and dissipaters.	125 Surf Way (seaward of oceanfront condominiums (172 units) at Ocean Harbor House), Monterey (Monterey County)

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: November 3, 2006
TO: Mike & Sally Canan
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver Number 3-06-056-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13250(c) of the California Code of Regulations.

APPLICANT: Mike & Sally Canan

LOCATION: 802 Mermaid Avenue, Pacific Grove (Monterey County) (APN(s) 006-071-008)

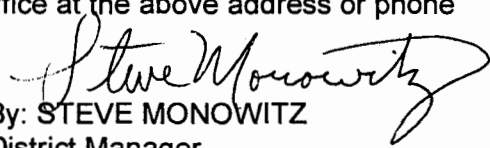
DESCRIPTION: Demolish an existing two-story duplex; construct a new single family residence.

RATIONALE: The proposed addition will not adversely impacts coastal resources, public views, community character, or public access to the shoreline. The size and scale of the addition is within the range of adjacent development, will not block coastal views, and is consistent with local requirements. The Applicant has proposed a drainage system that will direct storm water flows into landscaped areas on the site. Mitigation measures are proposed to minimize project related impacts to archaeological resources and to prescribe additional measures should archaeological resources be found during project related earth disturbing activities.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, November 16, 2006, in Huntington Beach. If three Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.
Joseph Rock, Architect

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**NOTICE OF COASTAL DEVELOPMENT PERMIT WAIVER**

DATE: November 2, 2006
TO: Chris Shake
FROM: Peter M. Douglas, Executive Director
SUBJECT: Waiver of Coastal Development Permit Requirement:
Waiver De Minimis Number 3-06-058-W

Based on project plans and information submitted by the applicant(s) named below regarding the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit, pursuant to Title 14, Section 13238 of the California Code of Regulations.

APPLICANT: Chris Shake
LOCATION: 40 Fisherman's Wharf No. 1, Monterey (Monterey County)
DESCRIPTION: Remove existing two-story fish market building. Construct new two-story multi-use building (gift shop on the first floor; storage and office space on the second floor).
RATIONALE: Proposed development includes best management practices to protect ocean water quality during construction. Construction activities will not impact public access along Fisherman's Wharf. The proposed development will involve no significant impacts on coastal resources.

IMPORTANT: This waiver is not valid unless the site has been posted AND until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission at the meeting of Thursday, November 16, 2006, in Huntington Beach. If four Commissioners object to this waiver, a coastal development permit will be required.

Persons wishing to object to or having questions regarding the issuance of a coastal permit waiver for this project should contact the Commission office at the above address or phone number prior to the Commission meeting date.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.
Robert McIntyre AIA

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November 1, 2006

NOTICE OF EXTENSION REQUEST FOR COASTAL DEVELOPMENT PERMIT

Notice is hereby given that **Ocean Harbor House Homeowners Association** has applied for a one-year extension of Permit No: **3-02-024** granted by the California Coastal Commission on: **October 14, 2004**

for **A request to extend coastal development permit for underpinning of seaward spread foundations with reinforced concrete piers; removal of existing riprap revetment; relocation of existing sewer line; construction of an approximately 585-foot-long reinforced concrete vertical seawall; and relocation of storm water pipes and dissipaters.**

at **125 Surf Way (seaward of oceanfront condominiums (172 units) at Ocean Harbor House), Monterey (Monterey County)**

Pursuant to Section 13169 of the Commission Regulations the Executive Director has determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. The Commission Regulations state that "if no objection is received at the Commission office within ten (10) working days of publishing notice, this determination of consistency shall be conclusive. . . and the Executive Director shall issue the extension." If an objection is received, the extension application shall be reported to the Commission for possible hearing.

Persons wishing to object or having questions concerning this extension application should contact the district office of the Commission at the above address or phone number.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.

California Land Planning, Attn: Anthony J. "Bud" Carney

CALIFORNIA COASTAL COMMISSION

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**Memorandum****November 15, 2006****To:** Commissioners and Interested Parties**From:** Charles Lester, Deputy Director, Central Coast District**Re:** **Additional Information for Commission Meeting Thursday, November 16, 2006**

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th3, Wetlands Workshop		Correspondence	1
Th9a, SLO-MAJ-1-05 Part 1 San Luis Obispo County		Staff Report Addendum	3
		Correspondence	7
Th9d, PSB-MAJ-2-06	City of Pismo Beach	Correspondence	57
Th10a, A-3-MCO-04-64	CA Parks & Recreation	Staff Report Addendum	59
		Correspondence	65
Th11a, 3-05-65-A2	Santa Cruz Port District	Correspondence	85

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November 14, 2006

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To:
Chairwoman Meg Caldwell and Commissioners
C/o Dr. Charles Lester or Dan Carl
Central Coast Regional Office

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: CCC Wetlands Workshop

Dear Chairwoman Caldwell and Commissioners:

I have attached a few excerpts for you from the official transcript of the April 12 CCC hearing concerning the wetland delineation controversy for the UCSC CLRDP application.

My understanding is that this controversy stimulated the wetland workshop you will be conducting. I hope that the attached statements made by Executive Director Douglas and Environmental Program Manager Dixon at the April 12 hearing in response to Commissioner's concerns will be kept in mind and that this workshop will not turn out to be a softening or repudiation of the CCC's protective one-criteria approach to wetland delineations.

Thank you very much for your kind attention.

Sincerely,



Don Stevens
320 Cave Gulch
Santa Cruz, CA 95060
Tel: 831-425-4721

(Executive Director Douglas from Page 131 starting on line 6, ending on line 14):

"But, there are a couple of things that I have heard here, and I am going to tell you how I think we are going to go in that direction.

For one, I have heard that you think we used the wrong criteria for wetland delineation, that you feel that we should use one of the three criteria that needs to be applied, and if one of the three is present, then it is a wetland. That will make a very significant difference here, obviously. So, that is what we are going to do."

(Executive Director Douglas from Page 137 starting on line 11, ending on line 23):

"If I may, Mr. Chairman, since Dr. Dixon is going to be the one who is going to have to go back to the drawing board on this, he would like clarification from the Commission, in terms of what you are looking at in terms of the criteria, and maybe he can pose the question better, because I certainly heard a number of you saying that the

Commission has taken the position, historically, that if one of the three criteria is present, then it is a wetland.

And, I just heard John whisper in my ear, if that is the case, then the entire site is a wetland, so I would like to ask him to ask you for clarification, so he gets direction."

(Dr. Dixon from Page 138 starting on line 8, ending on line 15):

"The whole site has low chromosoils. Most of the site has very low chromosoils, and that is an indicator. A very large proportion of the site, except, perhaps, in the upper northeast corner, has rye grass and then scattered amongst it is the false willow.

So, I think you have made all of the rest of your problems moot because the whole thing is a wetland, or very nearly the whole thing is a wetland."

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Th9a

Prepared November 15, 2006 (for November 16, 2006 hearing)

To: Coastal Commissioners and Interested Persons
From: Steve Monowitz, District Manager *SM 11/15/06*
Jonathan Bishop, Coastal Program Analyst
Subject: **STAFF REPORT ADDENDUM for Th9a**
SLO-MAJ-1-05 Part 1 (Port San Luis Harbor Master Plan)

As described in the October 26, 2006 staff report, San Luis Obispo County proposes to amend its Local Coastal Program by incorporating relevant provisions of the recently updated Port San Luis Harbor District Port Master Plan into the San Luis Bay Area segment of the Land Use Plan.

Since the staff report was completed, the County of San Luis Obispo, Port San Luis Harbor District, and other interested parties have proposed changes to the recommendations (see correspondence in District Directors Report). In response to these comments, staff has revised a number of the suggested modifications as follows (new text shown with double underlines; deletions are shown with ~~double strike-throughs~~):

(Mod 8 pg. 11) Modify Port San Luis Districtwide Policy #2 regarding development approvals:

2. Coastal Development Permitting Authority. All Port land-based properties are under the primary permitting jurisdiction of the County of San Luis Obispo, except for areas that have been previously filled or otherwise under jurisdiction of the California Coastal Commission. ~~Permitting for tideland and water areas are administered by the California Coastal Commission.~~ The California Coastal Commission retains permit jurisdiction for lands below the mean high tide line and where the public trust may exist (as shown in LCP Exhibit 8.8).

(Mod 18 pg. 14) Modify Aquatic and Terrestrial Habitats Policy #4:

4. Native Vegetation. Native oak trees and plant cover shall be protected wherever feasible. New landside development shall ~~Require~~ landscape plans that ~~incorporate~~ include only native, drought tolerant plants of local stock and other coastal species appropriate to the site and that reflect the Port's waterfront character. Invasive plant species are prohibited.

(Mod 19 pg. 14) Modify Aquatic and Terrestrial Habitat Policy #5:

5. Land-based Sensitive Resources. ~~Incorporate decisions and implementation measures that protect environmentally sensitive resources.~~ Consistent with the LCP provisions for Environmentally Sensitive



California Coastal Commission
November 2006 Meeting in Huntington Beach

Staff: J. Bishop Approved by: *JMB*

SLO-MAJ-1-05 Part 1 (Port San Luis Harbor Master Plan) addendum 11.15.06.doc

Habitat Areas (ESHA) already required pursuant to Coastal Zone Land Use Ordinance Section 23.07.170, Land based environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. Development adjacent to ESHA and parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

(Mod 20 pg. 14) Add new Aquatic and Terrestrial Habitat Policy #6 related to aquaculture and mariculture:

6. Aquaculture and Mariculture. Coastal development permit approval is required for the development or expansion of aquaculture and mariculture facilities. Aquaculture and mariculture facilities (including support structures such as, pens, nets, screens, anchors, holding tanks, intake and outfall lines, etc) shall be sited and designed to prevent adverse impacts to protect marine resources, environmentally sensitive habitats, water quality, coastal-dependent uses, and public access. Potential adverse impacts that shall be addressed include, but are not necessarily limited to, impacts from: ...

(Mod 29 pg. 17) Modify Harford Landing Policy #2:

2. Beneficial use. Provide efficient, safe, and convenient parking and circulation to benefit all users. Changes in parking and circulation patterns on Harford Landing (other than emergency closures and operation and maintenance activities covered under existing coastal development permits) that change the density or intensity of use of the land, or change the intensity of use of water, or of access thereto, shall require approval a coastal development permit from the California Coastal Commission or from the County depending on the projects location in relationship to the jurisdictional boundary shown on LCP Figure 8.8.

(Mod 31 pg. 17) Add new RV camping standards as Harford Landing Policy #4.

4. RV Camping on Harford Landing. ~~Except for the East Parking Lot,~~ RV camping is allowed on ~~Harford Landing~~ the Jetty for no more than 5 years following approval of this amendment (until November 16, 2011) or until another suitable location is established on Port property, whichever occurs first. Extension to this timeframe may be granted by the Executive Director of the Coastal Commission for good cause. RV camping is allowed ~~W~~ within the East Parking Lot, provided a minimum of twelve parking spaces shall be reserved for those vehicles pulling trailer boats, and their trailers. The balance of the East Parking Lot shall be mixed use parking, with priority given at all times to vehicles with trailer boats. RV camping shall not be permitted in any other area of the Harford Landing.

(Mod 36 pg. 18) Add new RV camping standards as Beach and Bluffs Policy #8:

8. RV Camping on Blufftop Overlooks. RV camping is allowed on blufftop overlooks (e.g. Nobi Pt. and Woodyard) for no more than 5 years following approval of this LCP amendment (until November 16, 2011) or until another suitable location is established on Port property, whichever occurs first. Extension to this timeframe may be granted by the County Planning Director and the Executive Director of the



Coastal Commission for good cause.

(Mod 40 pg. 19) Add New Harbor Terrace Policy #10: ...

5. Requiring that all development to be designed, colored, and sited to minimize visibility within the public viewshed. New development shall avoid large, boxy structures by providing variations in height, articulated roof forms and pitch, and open space view corridors. Structures shall blend in with the natural surroundings by using earth toned colors and materials. Reflective materials and finishes are prohibited. Lighting (particularly overhead street lights should they be necessary) shall be minimized in number and shall be shielded to orient lighting downward. All development shall be landscaped with native vegetation of local stock appropriate to the site in order to soften the visual prominence of the new development and to restore the visual qualities of the site. Invasive plant species are prohibited.

...

1. The revegetation of all cut slopes with native species of local stock appropriate to the site. Invasive plant species are prohibited.

(Mod 41 pg. 19) Modify Lighthouse Policy #3:

3. Managed Access. The Harbor District and County shall provide managed public access to the Point San Luis Lighthouse (e.g. trail, ~~water taxi~~, access staging, kayak, shuttle) and improve connections between the Lighthouse and other Port properties. The development of piers and bluff stairways to access the Lightstation by water is prohibited. The Harbor District shall actively pursue public access alternatives and road improvements to enhance land access opportunities to the Lightstation. Alternatives and enhancements may include, but are not limited to: lot line adjustments, land acquisitions, and easements to secure alternative access routes; road improvements; removal of barriers to access; multi-passenger vehicle access; construction of improved pedestrian/bicycle pathways from Avila Beach to the Lightstation entrance.

(Mod 42 pg. 19) Modify Lighthouse Policy #5:

5. Limitation on Use. Allow uses that comply with deed restrictions and the Lighthouse Documents of Acquisition and Utilization, including docent-led access, camping, ~~bed and breakfast~~ lower-cost (e.g. hostel) overnight accommodations (only in existing buildings for a maximum of 40 overnight guests), special events, paths and trails, sightseeing, picnicking, historic sites and museums, specialized programs, boat storage, administrative offices, maintenance shop, ~~boat launching~~, ~~water taxi~~, communication facilities, passive recreation, temporary events, ~~shoreline protection~~, and lighthouse-related gift and novelty shop.

(Mod 48) Modify Figure 8.5 Conceptual Harford Pier Plan.

Figure 8.5 shall be updated to clearly and accurately depict (consistent with the format of other conceptual development figures) all modifications specified above. The updated figure shall be in substantial conformance with the Harford Pier Parking and Facilities Plan "Option F" as ~~shown in~~



~~Exhibit F~~ attached as Exhibit G of this report. (Note: new Exhibit G attached to this addendum.

(New Mod 52) Add new Figure 8.8 showing the jurisdictional boundary on the Harford Landing. Figure 8.8 shall be in substantial conformance with Coastal Commission Boundary Determination and Harbor Terrace, Harford Landing, and Pier Map 1 in the Port Master Plan Appendices (Appendix C – Permitting Boundary Maps).

(Mod 534)

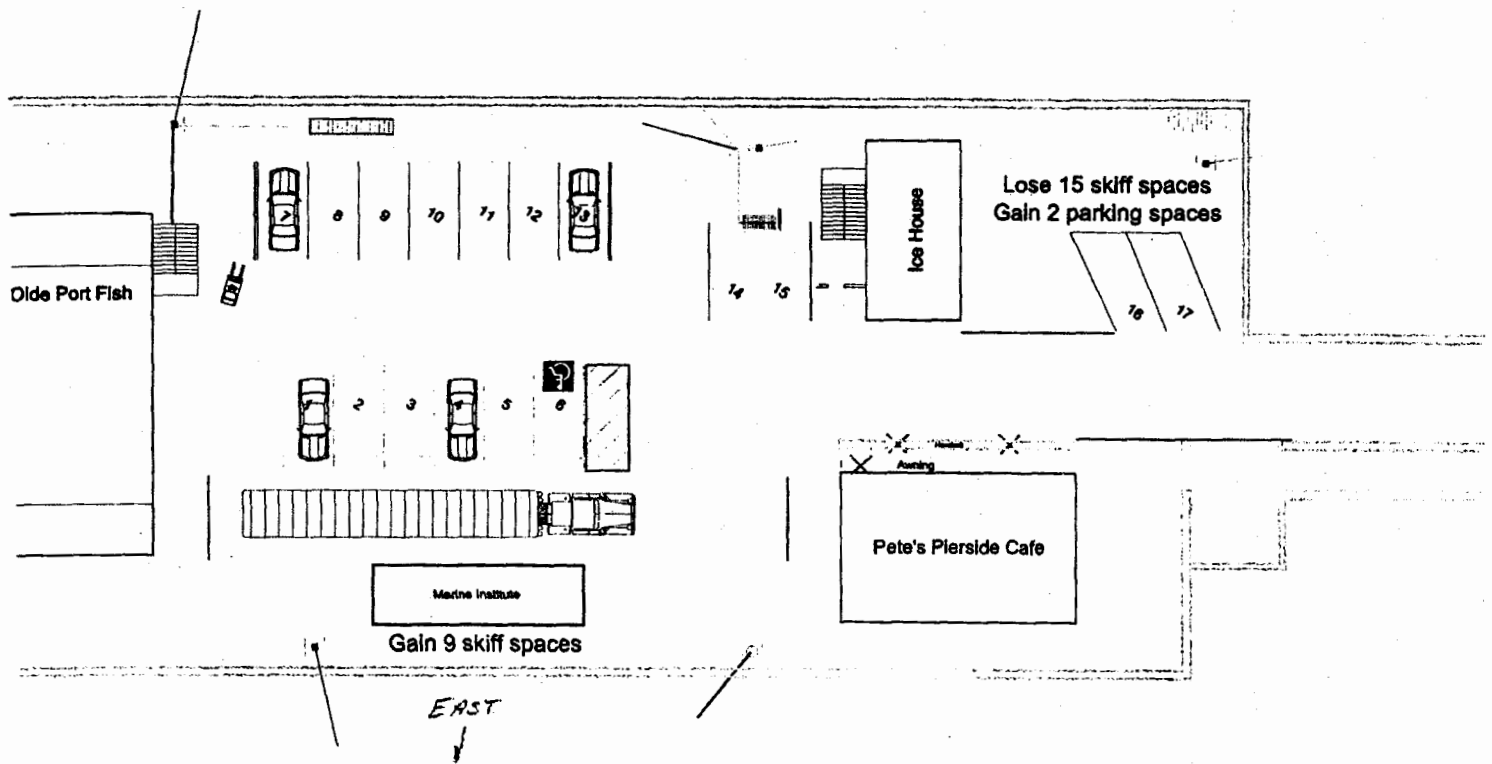
1. Coastal Plan Policies, Chapter 5 (“Commercial Fishing and Recreational Boating”), pages 5-3 – 5-4 (“Proposed Developments”): ...

The proposed development plan for the Harbor will be designed to provide additional boat haulout and repair capacity facilities, as well as storage during the winter storm period. ~~Presently, the boat storage repair area is located within the harbor parking lot which reduces parking for day use and causes substantial congestion of the facility. ...~~

Attachments:

- 1) Exhibit G - Revised Harford Pier Parking and Striping Plan (Option F)





Ford Pier Parking

Option F

06/22/04

Ex 32-7

Scale: 1"=20'

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SLO Board of Supervisors

805 781 1350

Th9a p.2

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CALIFORNIA
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CENTRAL COAST AREA

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

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NOV 19 2006
CALIFORNIA
COASTAL COMMISSION

Date and time of communication: 11-13-06 1:30 PM

Location of communication: S.L.O. COUNTY GOV. CENTER
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: CARLYN MOFFATT, PRES. PORT S.L.O.

Identity of person(s) receiving communication: DEBBIE RUDD PRINCIPAL AT RRM

Name or description of project: KIRK STORM HARBOR MANAGER
S.L.O. COASTAL program / port S.L. Harbor Master plan

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Differences between Coastal staff's Recommendation
and Harbor Commission's decision
Access by water
pier structure
ASK FOR SUPPORT

11-13-06
Date

[Signature]
Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2

Th 9a

Jonathan Bishop

From: mneder@co.slo.ca.us
Sent: Thursday, November 09, 2006 10:29 AM
To: Jonathan Bishop
Cc: Steve Monowitz; jeuphrat@co.slo.ca.us; dlrudd@rrmdesign.com
Subject: County Comments - San Luis Obispo County Local Coastal Program Major Amendment No. 1-05 (Part 1) Port San Luis Harbor Master Plan

Hi Jonathan;

Thank you for the staff report regarding San Luis Obispo County Local Coastal Program Major Amendment No. 1-05 (Part 1) Port San Luis Harbor Master Plan. The County requests a few minor revisions and clarifications to staff's suggested modifications.

Suggested Modification: (Mod 8 pg.11) Modify Port San Luis Districtwide Policy #2 regarding development approvals.

County Request: The County requests a clear map identifying the areas under jurisdiction of the California Coastal Commission and those under jurisdiction of the County. The official post certification maps are unclear and do not accurately depict the areas described in the proposed modification, leading to ongoing confusion. Without an accompanying map, it is unclear how this proposed modification would be interpreted.

Suggested Modification: (Mod 19 pg. 14) Modify Aquatic and Terrestrial Habitat Policy #5.

County Request: Revise the first sentence to read as follows: "Consistent with the LCP provisions for Environmentally Sensitive Habitat Areas (ESHA) already required pursuant to Coastal Zone Land Use Ordinance Section 23.07.172, land based ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." This revision acknowledges that CZLUO Section 23.07.172 applies and is not superseded by the planning area standard.

Suggested Modifications: (Mod 27 pg. 16) Modify Harford Pier Policy #5 and (Mod 29 pg. 17) Modify Harford Landing Policy #2.

County Request: Please clarify if these areas are in Coastal Original Jurisdiction (COJ). If so, the last sentence of Mod 29 pg. 17 should be revised to read "...shall require approval of a coastal development permit from the California Coastal Commission and may require a land use permit from the county." If not, the proposed modifications should be revised to require a Minor Use Permit from the County.

Suggested Modification: (Mod 31 pg. 17) Add new RV camping standards as Harford Landing Policy #4.

County Request: Modify the second sentence to read "Extension to this timeframe may be granted by the County Planning Director and the Executive Director of the California Coastal Commission for good cause."

Suggested Modification: (Mod 41 pg. 19) Modify Lightstation Policy #3.

County Request: Retain original language approved by the County Board of Supervisors. The County agrees that any such proposal would require detailed review of potential impacts to coastal resources and the environment, which would occur through the required permit process with the Coastal Commission and other regulatory bodies. Appropriately designed water access may enhance visitor-serving and coastal access opportunities while protecting coastal resources. An absolute prohibition of water access to the Lightstation in the LCP would preclude this alternative from even being analyzed.

Thank you for your consideration. Please contact me should you have any questions.

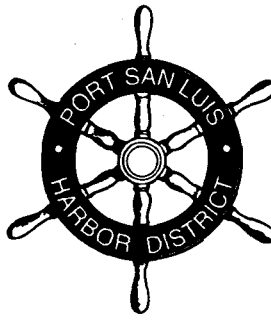
Sincerely,

Martha Neder, AICP
Planning and Building
San Luis Obispo County
V: (805) 781-4576
F: (805) 781-1242

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CAROLYN MOFFATT
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JAY K. ELDER
THOMAS D. GREEN
PHILLIP J. SEXTON, CPA

Harbor Manager
Legal Counsel
Treasurer

November 8, 2006

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NOV 13 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
c/o Steve Monowitz, District Manager
Central Coast District
725 Front Street, Suite 300
Santa Cruz, CA 95060

**Subject: San Luis Obispo County Local Coastal Program Amendment
No. 1-05 (Part 1)
Port San Luis Master Plan**

Honorable Chair and Members of the California Coastal Commission:

On behalf of the Port San Luis Harbor District, thank you for your consideration of our Local Coastal Program amendment. We appreciate the hard work and helpful insights of your staff, are truly appreciative of the cooperative approach taken by all involved, and are confident the proposed amendments will further the objectives of the Coastal Act while creating an environment conducive to the long-term viability of the Port.

The Port San Luis Harbor District Commissioners support the majority of your staff's recommendations to the LCP Amendment with a few minor modifications.

- First, we recommend changing the Lightstation Policy #3 (Mod 41, page 19) to allow marine access improvements at Light House Beach.
- Second, there are four minor changes and "clean up" items to Mod 20, Mod 40e, Mod 52, and Mod 53 (see Attachment A).

It is important to note that the proposed LCP Amendment and the Port Master Plan are not development proposals, rather guiding documents that provide parameters under which future projects will be proposed. They are a part of a comprehensive review framework that includes, but is not limited to, the County's General Plan, Local Coastal Program (LCP), the California Environmental Quality Act (CEQA), and other laws and regulations. The plan does not authorize development; any proposed development

would not only have to be consistent with the plan standards, but would also have to be consistent with all other requirements.

Background

In 2000 Port San Luis Harbor District received direction from the Coastal Commission to update our Master Plan and amend the County LCP accordingly (April 20, 2000, letter from Tami Grove). We were asked to wait until after the Avila Beach Specific Plan was completed before we began our update. As you are aware, the Coastal Commission also recommended in the LCP Periodic Review that the Harbor District update the Master Plan.

In 2001 we began an extensive public outreach process to gather input and direction from the fishermen, boaters, and users of Port facilities. After approximately 23 public meetings (workshops, Harbor Commission meetings, County Planning Commission meetings) the Board of Supervisors unanimously approved the LCP Amendment on June 14, 2005.

Light House Beach

As discussed in your staff report, one of the important goals of the Port Master Plan is to facilitate public access to all of the Port's facilities and resources, including the Point San Luis Lightstation.

To complement ongoing efforts, the Port Master Plan/LCP amendment recommends considering public access improvements that may include the replacement of the historic 'Coast Guard' pier that once served the Lightstation, or other appropriate landing structure, water taxi service, and by providing a walkway from the beach.

These are strategies that would be explored through project-specific analyses and subject to the issuance of a Coastal Development Permit.

The District feels that this is consistent with the goals of the Coastal Act, assures compliance with the Quit Claim Deed from the United States Government that granted the property to the District, and is an essential component of a public safety plan for emergency evacuation.

However, based largely on resource protection concerns, your staff is recommending modifications to the LCP (Modifications 41 and 42) that would establish an outright prohibition to these public access improvements.

Moreover, the recommended changes would prevent the Port from even investigating these strategies except through the context of an LCP amendment.

Accordingly, we are respectfully requesting that the list of allowable uses provide for these public access improvements, because:

- It is premature to make conclusions about the potential affects of these coastal access facilities in the absence of a more complete understanding of the consequences that would be revealed by site-specific and project-specific investigations.

In fact, your staff report states (page 51) *"For these reasons, inland access options to the Lightstation should be promoted, encouraged and evaluated before new water access and development of a new pier is pursued."*

The District agrees with your staff report, and simply requests that *"new water access and development of a new pier"* not be specifically prohibited.

- Any future improvements at the Lightstation will be subject to a Coastal Development Permit that affords ample opportunity to address the issues raised by your staff.

Such improvements would be subject to all of the resource protection policies of the current LCP and those recommended by this LCP amendment which, among other things, prohibits development that adversely impacts environmentally sensitive habitat areas (ESHA) and sets forth design criteria to minimize impacts to views.

- Such improvements would further the objectives of Coastal Act Sections 30211 and 30212(a), which promotes efforts to maintain and improve the public's right to access the sea and shoreline.
- The District developed a utilization plan as a component of the application to the federal government for the property.

This plan states in part: *"Access by water will allow the District to move the visitor staging area from Harford Pier and its congested (sic) (and limited) parking to Avila Beach, one mile south, which contains a Harbor District-owned 300 space parking lot."*

Additionally, the plan states: *"The existing beach and bluff area will be studied with the goal of constructing public access facilities by water, through a pier, floating landing or revetment along inside of breakwater to Whaler's Island to provide water taxi service from Harford Pier, Avila Pier and possibly Pismo Pier in the future. Stairs from the beach to the bluff-top, with a visitor viewing deck and rest area will be constructed."*

The deed of the property to the District from the U.S. Government states in part: *"This property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application, submitted by the grantee on October 23, 1990..."*

- On October 25, 2006, the District participated in a countywide exercise that evaluated various county agencies' response capability in the event of an emergency, natural or otherwise, that affected the Diablo Canyon Power Plant. As the nearest neighbor to the nuclear plant, the District actively participated in this exercise, and simulated successfully evacuating District properties at the first 'alert' from the plant. One matter of concern was the ability to quickly evacuate the Lightstation area in such an emergency, especially if the single lane road had been compromised. A re-built 'Coast Guard' pier or other appropriate structures become an important component of an emergency evacuation plan. (See attached 'Controller Post Exercise Discussion, dated October 25, 2006).
- The word County should be added to Modification 41. A portion of the land between Avila Beach and the Lighthouse entrance is County property, therefore, the Harbor District and the County would need to work together to provide a pedestrian/bike connection between Avila Beach and the Lighthouse.

In summary, we are simply asking that, by amending Modifications 41 and 42, the potential for water-borne public access to the Lightstation be an allowable use, and that the opportunity to investigate such options be maintained through the Coastal Development Permit process rather than through a Local Coastal Program amendment.

Proposed Changes:

- Add "and County"
- Do not delete "water taxi"
- Delete "The development of piers and bluff stairways to access the Lightstation by water is prohibited"

(Mod 41, page 19) Modify Lightstation Policy #3:

3. Managed Access. The Harbor District and County shall provide managed public access to the Point San Luis Lighthouse (e.g. trail, ~~water-taxi~~, water taxi, access staging, kayak, shuttle) and improve connections between the lighthouse and other Port properties. ~~The development of piers and bluff stairways to access the Lightstation by water is prohibited.~~ The Harbor District shall actively pursue public access alternatives and road improvements to enhance land access opportunities to the Lightstation. Alternatives and enhancements may include, but are not limited to, lot line adjustments, land acquisitions, and easements to secure alternative access routes; road improvements; removal of barriers to access; multi-passenger vehicle access; construction of improved pedestrian/bicycle pathways from Avila Beach to the Lightstation entrance.

Proposed Change:

- Do not delete "boat launching" and "water taxi"
- Add "(hostel)"

(Mod 42 pg. 19) Modify Lightstation Policy #5:

5. Limitation on Use. Allow uses that comply with deed restrictions and the Lighthouse Documents of Acquisition and Utilization, including docent-led access, camping, ~~bed and breakfast~~ or other low-cost (hostel) overnight accommodations (only in existing buildings), ~~for a maximum of 40 overnight guests~~, special events, paths and trails, sightseeing, picnicking, historic sites and museums, specialized programs, boat storage, administrative offices, maintenance shop, ~~boat launching, water taxi,~~ communication facilities, passive recreation, temporary events, ~~shoreline protection,~~ and lighthouse-related gift and novelty shop. Other accommodations may be considered if evidence can be provided that additional revenue would be used for maintenance of the lighthouse.

On the behalf of the Harbor Commission, I would like to request your support for our Master Plan and certification of the LCP Amendment.

Sincerely,



Carolyn Moffat
Harbor Commission President
Port San Luis Harbor District

CM: lp

Attached: Attachment A - List of minor changes and clean up to CCC Staff Report
Attachment B - Controller Post Exercise Discussion, dated October 25, 2006).

cc: PSLHD Harbor Commissioners

ATTACHMENT A

List of Minor Changes and clean up to CCC Staff Report

Attachment A is a list of minor changes and “clean up” items to the Coastal Commission staff proposed modifications.

Mod 20 pg. 14 (Aquatic and Terrestrial Habitat Policy #6):

Policy 6 is a modification recommended by your staff that speaks to the protection of marine resources from the potentially harmful affects of aquaculture and mariculture. Note that the second sentence recommends that facilities in support of these activities “...*shall be sited and designed to prevent adverse impacts to marine resources...*” (emphasis provided).

This language suggests that facilities for aquaculture and mariculture must be sited to prevent any adverse impact to marine resources, no matter how slight. Arguably, the siting of such facilities may have adverse affects that are negligible or insignificant. For example, the temporary anchoring of holding pens for the cultivation of fish brood stocks.

The Harbor District proposes a minor edit to Modification 20 to more closely reflect the Coastal Act Language (30231) and make the proposed language more achievable. Section 30231 of the Coastal Act uses the words “minimizing adverse effects” rather than “prevent adverse” when discussing impacts to marine resources. We request that the Coastal Act language “minimize adverse” replace “prevent adverse”.

Proposed Change:

- Replace “prevent” with “minimize”.

6. Aquaculture and Mariculture. Coastal development permit approval is required for the development or expansion of aquaculture and mariculture facilities. Aquaculture and mariculture facilities (including support structures such as pens, nets, screens, anchors, holding tanks, intake and outfall lines, etc) shall be sited and designed to ~~prevent~~ minimize adverse impacts to marine resources, environmentally sensitive habitats, water quality, coastal-dependent uses, and public access. Potential

adverse impacts that shall be addressed include, but are not necessarily limited to, impacts from:

- a. Fish escapes, including potential adverse impacts from genetic pollution of the wild stock, the transmission of disease from cultured fish to the wild stock, and the potential for cultured fish to become an exotic invasive species;
- b. The culture of high trophic-level fish on stocks of low trophic-level fish and the ecosystem as a whole;
- c. Organic pollution and eutrophication, including potential adverse impacts to the benthic environment;
- d. The use of chemicals, including the use of antibiotics and/or anti-fouling treatments for fish pens;
- e. Space and/or use conflicts;
- f. Physical effects to the seafloor from anchors and/or other structures; and
- g. Anti-predation devices.

Mod 40(e) on page 19 (Harbor Terrace Policy #10):

This is a modification recommended by your staff that sets precise standards for slope stability to be applied to the grading of areas where structures for human occupation are contemplated. While the Port welcomes the recommended standards as they apply to the protection of new buildings, we would recommend deleting *parking lots* from the list of examples used to illustrate "structures for human occupation". The reasons are twofold. First, the Port Master Plan and final environmental impact report set forth a wide range of mitigation measures aimed at protecting structures and people from the potential hazards associated with geologic instability. These standards are incorporated into the LCP by Modification No. 9 and complement the existing seismic safety and grading requirements of the current LCP and Uniform Building Code. Thus, adequate protection is provided by existing standards and those recommended by this LCP amendment. Secondly, one of the areas where parking is contemplated is the Harbor Terrace site which is geologically complex and subject to a number of landslides. While the Port's geologist is confident the recommended standard can be met on Harbor Terrace, a parking lot would seem to be an appropriate use for areas where meeting the standard would be most problematic. Deleting parking lots from the list of structures designated for human occupancy would still afford the maximum protection to people and structures while allowing flexibility in the location of important coastal dependent uses.

Proposed Change:

- Delete "parking lots"

- e. To reduce hazards on the Harbor Terrace, new structures designated for human occupation and use(e.g. hotels, motels, campsites, ~~parking lots~~ offices, commercial areas) must demonstrate a static factor of safety with respect to slope stability of 1.5 and a pseudostatic factor of safety to 1.1, using a horizontal seismic coefficient of 0.15g. In addition, uses on the Harbor Terrace or slopes above it that would have a significant potential to saturate the soils and add further slope instability, such as drainage detention basins or septic systems, shall be prohibited.

Mod. 53 4) (page 26 of staff report)

There is a line of text that is left over from the previous LCP language that is outdated due to the boat repair yard being relocated in 2002. The boat repair yard was previously located in what we now call the east parking lot. Relocating it solved the congestion problem referenced in the previous LCP language.

Clean Up Change:

- Delete the second sentence in the paragraph.

~~"Presently, the boat storage repair area is located within the harbor parking lot which reduces parking for day use and causes substantial congestion of the facility."~~

Page 52 of Staff Report:

This is a description of the existing conditions on Harford Pier interpreted from Exhibit E (included in staff report). Staff interpreted Exhibit E to have 2 loading spaces for large trucks (up to 70 feet) where there is actually only 1 space for large trucks and additional spaces for smaller trucks. The large truck loading space is only necessary for fish processing. The smaller loading spaces are used to access the public hoists.

We request this sentence be revised to reflect the correct number of large truck loading spaces:

Clean Up Change:

- Replace "Two spaces are provided for large trucks (up to 70') with "Several spaces are provided for loading zones with one space suitable for large fish processing trucks (up to 70')"

~~"The PSLHD has provided a parking plan that appears adequate to meet the needs of the commercial fishing operation... Several spaces are provided for loading zones Two spaces are provided with one space suitable for large fish processing trucks (up to 70') and the number of general parking spaces is maintained."~~

ATTACHMENT B

Controller Post-Exercise Discussion

October 25, 2006

BOARD OF COMMISSIONERS

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JAY K. ELDER
THOMAS D. GREEN
PHILLIP J. SEXTON, CPA

Harbor Manager
Legal Counsel
Treasurer

CONTROLLER POST - EXERCISE DISCUSSION
October 25, 2006

The meeting was held in the conference room of the Harbor Office.

Participants: Casey Nielsen, Controller; Steve McGrath, Incident Commander; Greg Weisberg, Operations Officer
Scribe: Administrative Secretary

CALL TO ORDER

Casey Nielsen called the meeting to order at 1:30 p.m., and stated that the purpose of the meeting was quality improvement, using a "no fault" format. He added that employees could also forward any written comments directly to OES.

FACILITIES

The FEMA evaluator commented that Port San Luis needs a 'red phone'.

Alternate emergency egress from the Lighthouse area is needed – via water?

EQUIPMENT

Port San Luis not toned out on first notification; however copied via County Fire.

Port San Luis did not receive any Tsunami warning bulletins from OES (by any medium.)

Port San Luis received no faxes until after evacuation from City's liaison desk (but did receive e-mails). For example, #5 was written at 11:40 a.m. but not received by fax until 2:19 p.m.

One Harbor vehicle was out of gas. We need to ensure all vehicles are kept at a half tank or more.

Need to purchase 1 more bullhorn for use in vehicles.

SOP'S

Staff to work with OES to merge District Guidelines with SOP's.

Add to our guidelines: Forward office phones to the remote command center.

Add option of using vessel P.A. system for beach-wide announcement.

STAFFING / TRAINING / MISC.

Operations Officer to retrieve duty cell phone from Harbor Patrol at mobilization.

Need additional training with CDF with remote command center locations.

Our 2 boat operators were assigned to landside operations. We should consider using them to take vessels to sea.

ADJOURNMENT

Controller Nielsen thanked everyone for their efforts, and the meeting ended at 2:06 p.m.

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Th9a

ARTHUR F. COON

AFC@MSANDR.COM

November 9, 2006

AGENDA ITEM Th9A
Application No. SLO-MAG-1-05 Part I
Arthur F. Coon, Miller Starr & Regalia
Attorneys for Barry Cohen and Leonard Cohen
Position: Oppose Unless Modified; Support Staff Recommendation

Steve Monowitz
District Manager
California Coastal Commission
Central Coast District
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Mr. Monowitz:

As you know, this office represents Barry Cohen and Leonard Cohen and their family businesses, Olde Port Fisheries, Inc. and Olde Port Inn, Inc. (collectively the "Cohens"), and we have corresponded previously with you regarding the Port San Luis Harbor District's (the "District") actions in violation of its Coastal Development Permit and various California Coastal Act requirements. (See, e.g., my January 10, 2006, and June 20, 2006 letters to you, concerning the District's illegal actions in changing historic parking and truck access and density and intensity of use on the Harford Pier terminus, copies enclosed.) The Cohens are lessees of the District and their businesses are commercial fishing and related activities which are directly protected by the Coastal Act and harmed by District's violations of that Act.

We write now to express general support for the Coastal Commission Staff's recommendation on San Luis Obispo County Local Coastal Program Major Amendment No. 1-05 (Part 1), Port San Luis Harbor Master Plan (SLO-MAG-1-05, Part 1), with slight modifications. The Cohens support the Staff's position that the LCP Amendment should be denied unless modified extensively to protect, inter alia, historic access and commercial fishing activities, as recommended by the Coastal Commission staff. **The Cohens herein provide specific options for LUP Figure 8-5 which will comply with the Staff's recommendations, the California Coastal Act, and the District's legal obligations under the recently issued November 7, 2006 "Statement of Decision on Plaintiffs' Claims for Equitable Relief and Defendant's Claim for Ejectment and Money Damages on Barry Cohen's Failure To Pay Rent [CCP § 632]" in the case of *Barry A. Cohen, et al. v. Port San Luis Harbor District, San***

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Luis Obispo County Superior Court, Case No. CV 040897 (the "Statement of Decision"). The Cohens also request revision of Staff's recommendation of up to 5 years for the "phase out" of RVs in the Harford Landing area, because an **immediate cessation of exclusive RV use of that area will be required to comply with the Statement of Decision and Cohens' lease rights.** A true and correct copy of the Statement of Decision was previously provided to you by e-mail, and another copy is enclosed herein for Staff's and the Commission's convenient reference.

As recognized by Staff, the May 2005 Striping Plan submitted by the District (Staff Report, Exhibit E) does not accomplish the relevant Coastal Act goals of supporting, preserving and enhancing commercial fishing and public access, and is woefully inadequate to comply with staff recommendations for LUP Figure 8-5 or the Coastal Act.¹ Nor does the Exhibit E figure prepared by the District comply with the San Luis Obispo County Superior Court's November 7, 2006 Statement of Decision directing the District to accommodate specific truck access and parking on the Harford Pier terminus for the benefit of access for the commercial fishing industry and the general public, as also required by contractual commitments previously made and breached by the District as found by the Court.

In pertinent part, the Court's Statement of Decision finds that defendant District, among other things, breached its 1976 lease with the Cohens by failing "to properly provide parking and truck access" (Statement of Decision, 3:13), failed to "maintain [] the public walkways as required by the lease" (*id.* at 3:23-24), "failed to provide adequate truck access to [Cohens] so that [Cohens] can operate the fish business" (*id.* at 3:26-27), "unreasonably affectively denied adequate truck access to [Cohens] fish business by reason of poor management of the public parking" (*id.* at 4:3-4), and in doing so, "breached the parking space and fish truck access obligations [under its agreements]." (*Id.* at 6:4-5.) The Court also finds that the "fire lane related events ... either rendered unavailable any defined parking spaces which

¹ The October 26, 2006 Staff Report (hereafter "Staff Report") recognizes the "need to secure deck space and ensure that adequate facilities are available for continued commercial fishing and recreational boating operations including commercial fish offloading zones, storage areas, fueling stations, boat hoists, and skiff storage racks." (Staff Report, p. 3.) The Staff's "suggested modification requires an update to LUP Figure 8-5, which shows the type, size, and location of high priority facilities on the pier. Including an updated Figure 8-5 in the LUP will establish baseline conditions and will ensure that commercial fishing and boating facilities on the Harford Pier are adequate and protected." (*Ibid.*) The Staff Report recognizes that "on the Harford Pier, parking for commercial fish offloading and the general public is an important access issue." (*Id.* at p. 4.) Through the required updated LUP Figure 8-5, "[p]arking for high priority uses can be assured, user conflicts can be avoided, and any changes to the current parking situation can be reviewed for coastal consistency through the coastal development permitting process." (*Id.* at p. 5.) The updated LUP Figure 8-5 should recognize and implement the modifications to the LUP Amendment recommended in the Staff Report (*see, e.g.*, Staff Report, p. 12 [mod. 11, p. 12], p. 13 [mod. 13, p. 13], p. 16 [mod. 27, p. 16, mod. 29, p. 17], p. 24 [mod. 48]). It should also be consistent with historic uses of the Harford Pier and Harford Landing (Staff Report, pp. 28-29), and consistent with the Coastal Act Land Use policies concerning commercial fishing, recreational boating, and public access which are implicated by the uses at the Harford Pier Terminus and the accommodation of those uses by the terminus layout (*see, e.g.*, Staff Report, pp. 34-35).

happened to be unoccupied when a fish truck would arrive or require the trucks to occupy a prohibited fire lane.” (*Id.* at 6:27-7-2.) The Court’s Statement of Decision orders the District to take action relevant to proposed LUP Figure 8-5, and to the removal of RVs from Harford Landing, as follows:

Therefore, the court orders Defendant to perform its obligation to provide adequate parking on the terminus. The Defendant is ordered to reconfigure the defined parking spaces in accordance with either Option D or Option F of Trial Exhibit 32 so that the Plaintiffs and the other business will have access to at least 17 nonexclusive public parking spaces and that commercial trucks would be allowed one space for temporary stoppage which does not block the public parking spaces or the fire lane on the terminus. If either Option D or F would allow a second space, even if that second space blocked parking, Defendant is ordered to provide such a space for a second truck to stop temporarily on the terminus. Defendant is further ordered to repair defined and undefined public walkways from the Harford Landing to the end of the terminus so that visitors and customers can safely pass upon them. The Defendant is further ordered to ensure that parking spaces adjacent to the pier landing, i.e., in the Harford Landing Area, are not designated as exclusive parking for recreational vehicles or boat trailers to the exclusion of automobiles. Defendant is ordered to begin work described above within 30 days from final judgment. (Statement of Decision, 10:11-25.)

The Cohens have enclosed figures showing three (3) options for LUP Figure 8-5, all of which satisfy Staff’s recommendations, the Coastal Act, and the Superior Court’s Statement of Decision (which requires either Option D or F of Trial Exhibit 32, modified if possible to accommodate a second commercial truck unloading/loading space). The figure shown on the enclosed sheet labeled “Option F” is the Option F referred to by the Court, which was considered and rejected by the District in June 2004. The sheet labeled “Option A/F” shows a figure which is a modified version of Option F, that accommodates a second truck space which does not block any parking spaces. The sheet labeled “New Proposed Option” is a modified version of former “Option D” (also referenced in the Court’s Statement of Decision), which would accommodate a second truck space that would temporarily block 4 parking spaces.

The Cohens would prefer **Option A/F**, which accommodates a second truck space *and* would not require the construction of any additional pier terminus area. Any of these options would accommodate historic uses, restore the access and density and intensity of use illegally changed by the District in 2004, and satisfy the Coastal Act, District’s relevant contractual obligations, and the Court’s Statement of Decision. Relevant facts which underscore this, and of which the Commission and its staff should be aware, are: (1) the Marine Institute just opened in Avila, and the Marine Institute structure shown on Staff Report Exhibit E and the enclosed figures is no longer needed; (2) there is an area of the Harford Pier terminus underneath

Steve Monowitz
November 9, 2006
Page 4

the warehouse canopy on the east side across from the Olde Port Inn restaurant which is currently unused and could accommodate the skiff racks required to be relocated by the Court's decision; and (3) removal or relocation of the hoist as shown in Option A/F and the New Proposed Option would not result in any inconvenience or hardship as three (3) other hoists in the area remain available for use.

In sum, the enclosed options for LUP Figure 8-5 are consistent with the party's contracts, the Coastal Act, the Staff recommendations, the Court's Statement of Decision and the historical use illegally altered by District, as explained by prior correspondence, in that they would provide at least 17 public parking spaces while at the same time allowing large commercial truck access not blocking any of those spaces and occurring outside of the fire lane. Staff should therefore select a preferred option for LUP Figure 8-5, which the Cohens believe should be Option A/F from among these options and prepare an Addendum to its October 26, 2006 report supporting that recommended option.

Staff should also revise its recommended Modification 31, p. 17, (Staff Report, p. 17), and any related modifications, to disallow and require immediate removal of RVs from Harford Landing's rather than allowing up to 5 years to terminate this illegally instituted use. This is required by the Court's Statement of Decision (at 9:14-19, 10:21-24) and the Cohens' leases. (See e.g., 1994 Lease, ¶¶ 2B., 15.)

Very truly yours,

MILLER, STARR & REGALIA



Arthur F. Coon

AFC:klw
encls.

cc: Thomas D. Green, Esq., counsel for Port San Luis Harbor District (w/encls.)
Barry A. Cohen
Leonard A. Cohen
George B. Speir, Esq.

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ARTHUR F. COON

AFC@MSANDR.COM

January 10, 2006

Via Facsimile and Overnight Mail
(Exhibits by Overnight Mail)

Steve Monowitz
District Manager
California Coastal Commission
Central Coast District
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Port San Luis Harbor District's Violations of Coastal Development
Permit and California Coastal Act Requirements In Eliminating And
Adversely Affecting Commercial Fishing Operations/Coastal Access On
Harford Pier

Dear Mr. Monowitz:

This firm represents Barry Cohen, Leonard Cohen, Olde Port Fisheries, Inc., and Olde Port Inn, Inc. (collectively the "Cohens") with respect to ongoing disputes and litigation with the Cohens' landlord, the Port San Luis Harbor District ("District"), concerning the District's actions and neglect with respect to the Harford Pier in Port San Luis in Avila Beach, San Luis Obispo County. A complete copy of the Cohens' October 22, 2004 Complaint for Breach of Lease and Contract, Breach of Implied Covenant of Good Faith and Fair Dealing, Specific Performance, Injunction, Declaratory Relief, Intentional Interference With Business Advantage, Breach of Public Trust, Damages and Attorneys' Fees, along with its exhibits ("Complaint") is enclosed for your information, files and convenient reference as Exhibit A.

I. **INTRODUCTION.**

As can be seen from the Complaint, the Cohens are parties to and beneficiaries of a 1993 Settlement Agreement and various existing leases with the District for restaurant, fish market, commercial fish processing/wholesale and related facilities on the historic Harford Pier. Among other things, these contracts spell out in detail the District's agreed obligations with respect to providing commercial fishing truck access to and public parking on the pier. While stating claims for breach of these contracts, the Complaint also alleges and seeks relief for violations of the District's "Master Plan, the public trust, and all applicable law." (Complaint,

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16:23-25; see also, e.g., *id.* at 19:18-20; 20:13-14; 20:20-21:19; 22:7-13.) Among other applicable laws and policies that District's actions and omissions have violated are its own Master Plan and California Coastal Act provisions protecting existing commercial fishing industry facilities and coastal access. (*Id.* at 5:3-8.) The District's actions (taken in concert with the California Department of Forestry and Fire Protection/San Luis Obispo Fire Department ("CDF")) in striping an 18-foot fire lane down the length of the Harford Pier had the effect of completely cutting off previously existing and contractually-guaranteed commercial fishing truck access to Barry Cohen's fish processing and wholesale facilities on the Harford Pier terminus. (See May 2, 2004 Memo from CDF Battalion Chief Mike Harkness, and e-mails between CDF and District negotiating the memo's content, attached as Group Exhibit B.)

District's actions not only put Mr. Cohen out of the wholesale/processing fish business, but they completely eliminated significant commercial fishing industry activities – offloading, processing, shipping, etc. – that had existed on the historic Harford Pier in Port San Luis for generations. These actions, which have drastically changed the density or intensity of historic coastal dependent uses of the Harford Pier and its surrounding waters, and the existing public access thereto, *were taken without authorization by any coastal development permit, without the knowledge or approval of the Coastal Commission, and in violation of numerous mandatory provisions of the Coastal Act protecting commercial fishing and coastal access.* Because the District (and/or CDF) failed to comply with the Coastal Act and obtain the necessary coastal permit prior to taking its actions, the Cohens were also deprived of due process and had no opportunity to address their concerns to the Coastal Commission before these drastic actions were taken. Had the District complied with the Coastal Act and applied for a permit, the lawsuit which was precipitated by its unlawful actions could have been prevented.

II. **THE COASTAL ACT BROADLY DEFINES AND REQUIRES A PERMIT FOR "DEVELOPMENT," WHICH MUST COMPLY WITH ALL COASTAL ACT PROVISIONS AND POLICIES.**

The Coastal Act requires any person desiring to perform or undertake any development in the coastal zone to obtain a coastal development permit. (Pub. Resources Code, § 30600(a); see *La Costa Beach Homeowners' Assn. v. California Coastal Com.* (2002) 101 Cal.App.4th, 804, 815.) The term "person" includes the state, local governments and special districts. (Pub. Resources Code, § 30111; 62 Ops. Cal. Atty. Gen. (1979), 527, 528.) "Development" is broadly defined and liberally construed for purposes of the Coastal Commission's permitting jurisdiction (Pub. Resources Code, §§ 30106, 30009; *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 240) and includes, but is not limited to, "the placement or erection of any solid material or structure; ... change in the density or intensity of use of land ...; [and] change in the intensity or use of water, or of access thereto ..." (§ 30106.)

The California Coastal Commission's implementing administrative regulations require a coastal development permit for repair, maintenance and improvements in structures in, adjacent to, and above coastal waters. (See Adopted Coastal Dev. Permit App. No. 3-02-071 (adopted 3/06/03)/Staff Report [hereinafter "3/6/03 O&M Permit Approval"]; attached as Exhibit C], at p. 8; Pub. Resources Code, § 30610(b).) "Pursuant to Public Resources Code section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code: (1) Improvement to any structure if the structure or the improvement is located ... seaward of the mean high tide line; ... (7) Any improvement to a structure which changes the intensity of use of the structure[.]" (14 Cal. Code Regs. § 13253(b)(1), (7).) Division 20 of the Public Resources Code comprises the entire California Coastal Act (Pub. Resources Code, § 30000 et seq.). (See also Pub. Resources Code, § 30610(b) [requiring Commission to specify by regulation otherwise exempt developments which require coastal development permit because they "(1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division."].) "Every coastal development permit issued by the Commission for development between the nearest public road and the sea must include a specific finding that the development is in conformity with the Coastal Act's public access and recreation policies." (*Surfrider Foundation v. California Coastal Com.* (1994) 26 Cal.App.4th 151, 157, citing Pub. Resources Code, § 30604(c).)

Coastal development permit applicants are required to submit to the Commission information "sufficient to determine whether the project complies with all relevant policies of the Coastal Act" and "[t]he description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment." (14 Cal. Code Regs. § 13053.5(a).) Projects substantially affecting the coastal zone are considered to be of statewide, regional or area-wide significance. (14 Cal. Code Regs. § 15206(b)(4)(C).) The "environment" includes "objects of historic or aesthetic significance" (§§ 15360, 15382), and a project's environmental impacts are considered significant and an Environmental Impact Report ("EIR") is required if the project potentially eliminates examples of major periods of California history (§ 15065(a)(1)), or causes a substantial adverse change in the significance of a designated historical resource. (Pub. Resources Code, § 21084.1.) Coastal Act provisions inconsistent with California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq.) provisions take precedence. (Pub. Resources Code, § 21174; *Sierra Club v. California Coastal Comm.* (2005) 35 Cal.4th 839, 859.)

III. **THE COASTAL ACT PROTECTS COMMERCIAL FISHING AND PUBLIC ACCESS AND FORBIDS DEVELOPMENT INCONSISTENT WITH THESE PROTECTIONS.**

The Coastal Act provides in pertinent part:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

(Pub. Resources Code, § 30234.)

The Act also provides:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

(Pub. Resources Code, § 30234.5.)

Further, the Act provides that: "Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses." (Pub. Resources Code, § 30220.) It also provides that "[t]he location and amount of new development should maintain and enhance public access to the coast by [, among other things,] ... providing adequate parking facilities" (§ 30252) and that "[n]ew development shall ... minimize energy consumption and vehicle miles traveled." (§ 30253(4).) New development shall also "[w]here appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses." (§ 30253(5).)

In carrying out the constitutional requirement of public access to navigable waters (see Cal. Const., Art. X, § 4), the Coastal Act provides that "maximum access ... and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (*Surfrider Foundation v. California Coastal Com.*, *supra*, 26 Cal.App.4th at 157, citing Pub. Resources Code, § 30210.) "The Coastal Act further provides, 'Development shall not interfere with the public's right to access to the sea where acquired through use or legislative authorization'" (*Id.*, citing Pub. Resources Code, § 30211, ellipsis added.) The Coastal Act's policies and provisions protecting public access and coastal recreation extend not only to direct impediments to such access, but to "indirect or nonphysical impediments to access, including reduction of road capacity and off-street parking, unavailability of ... tourist facilities, and proliferation of expensive recreational facilities." (*Id.* at 157-158, citing Cal. Coastal Zone Conservation Com., Cal. Coastal Plan (1975) pp. 152-153.) The Court of Appeal has accordingly held:

Thus, the concerns placed before the Legislature in 1976 were more broad based than physical impedance of access. For this reason, we conclude the public access and recreational policies of the Coastal Act should be broadly construed to encompass *all* impediments to access, whether direct or indirect, physical or nonphysical.

(*Surfrider Foundation v. California Coastal Com.*, *supra*, 26 Cal.App.4th at 158, *emph. in orig.*; *id.* at 157-158 [holding Coastal Commission's approval of installation of devices for the collection of parking fees at 16 state park beaches implicated an "indirect effect on access within the scope of the act's policies"].)

IV. **THE DISTRICT'S EXISTING COASTAL DEVELOPMENT PERMIT IS CONDITIONED ON DISTRICT'S PROTECTION OF COMMERCIAL FISHING AND PUBLIC ACCESS AND DOES NOT AUTHORIZE ANY DEVELOPMENT ON HARFORD PIER WHICH WOULD HARM COMMERCIAL FISHING OR IMPEDE ACCESS.**

In granting the District's currently effective O&M permit, the Coastal Commission expressly found that its proposed and permitted activities on the Harford Pier would be in compliance with the requirements of the applicable Coastal Act provisions:

Coastal Act Sections 30234 and 30234.5 require that the importance of fishing activities be recognized, and that facilities serving the commercial fishing [and] recreational boating industries be protected, and where feasible upgraded. This permit allows the Port San Luis Harbor District to proceed with the repair and maintenance activities that are essential to maintaining and operating the commercial fishing fleet as well as the recreational boats. Therefore, the Commission finds that this project implements, and is consistent with, Section[s] 30234 and 30234.5.

(3/6/03 O&M Permit Approval, pp. 23-24.)

The Commission further expressly found:

Coastal Action Section 30220 protects coastal areas for water oriented recreational activities. Section 30252 requires that the location and amount of new development maintain and enhance public access to the coast. The proposed repair and maintenance activities will protect and enhance the water oriented access and recreation facilities provided by Port San Luis Harbor.... As conditioned, the project will maintain and enhance public access to

the coast, and is therefore consistent with sections 30220 and 30252 of the Coastal Act regarding public access and parking.

(*Id.*, at p. 24.)

Accordingly, the District's current Coastal Development permit does not permit or authorize it to undertake any development on Harford Pier that would harm, reduce or eliminate, or even fail to protect, commercial fishing activity there. Nor does District's current permit allow it to undertake development which impedes, directly or indirectly, public access.

V. **THE DISTRICT'S ACTIONS IN ELIMINATING COMMERCIAL FISHING AND TRUCK ACCESS/PARKING FROM HARFORD PIER WERE UNPERMITTED AND VIOLATED THE COASTAL ACT.**

For decades, Cohens operated a commercial fish processing/wholesale business serving the commercial fishing industry on Harford Pier until in or about September 2004, when the District cut off the necessary semi truck access. (*See generally* Exhibit A [Complaint].) Under District's and CDF's previous rules, the semi trucks needed for hauling fish and processed fish on and off the pier regularly accessed the pier and were allowed to park in fire lanes and in the center of the roadway on the pier terminus to load and unload. (See, e.g., Group Exhibit D [4/17/95 CDF Battalion Chief to Harbor Manager Elder letter; 4/8/02 Joe Barget memo, copied to Harbor Manager, et al.].) This was consistent with historical use, Coastal Act policies, and the District's own Master Plan for Harford Pier. (E.g., Exhibit E [pp. 2-4, 2-6 of Port Master Plan].) It was also consistent with the District's coastal development permits, including the most recent and operative O&M permit. (Exhibit C.)

The District's actions taken and decisions made over the years to hurt commercial fishing, however, have spoken far louder than the high-minded words of its Master Plan and the law. Its employees have barred commercial fishing trucks from the shore side parking lot, telling the fishermen that the fish trucks "destroy the pier, ... drip nasty fish juice," and that RV "campers complain" and that the truckers should "stop in King City or San Migu[e]l but they were not welcomed at Port San Luis." (See Group Exhibit F [9/30/03 letter from fisherman Craig Stolz to Harbor Commissioner; responsive 10/3/03 letter to Stolz from Harbor Manager Elder stating "Due to the limited amount of parking available, it is our policy not to allow semitrucks to park on Harbor District properties."].) In recent years, District has been increasingly hostile to commercial fishing, and related processing and trucking operations on the pier, complaining – in direct conflict with District's Master Plan – that such activities adversely affect public use and enjoyment of the historic working pier. (E.g., Exhibit G [5/7/04 Harbor District list of "issues" with Cohens' businesses and commercial fishing].) The District has actually harassed commercial fishermen, and refused to allow at least three commercial boats to moor in the Harbor during stormy weather. It has attempted to make fishermen pay for allegedly "breaking" already-rotten structural pier components with their boats when tying up, and has allowed camels designed to accommodate commercial boat tie ups to rot and break and chosen

not to replace them. (See, e.g., Exhibit H [5/11/04 memo from District employee and photos of rotten pilings and rotten, broken camels].)

Due mainly to the District's animus towards the Cohens, and particularly their fish businesses, and its disinclination to do the required maintenance on its "working pier," the District and its Harbor Manager, Jay Elder, have also pushed for many years for the consideration and adoption of weight limits which would prohibit the large fish trucks from continuing to access the Harford Pier. (See Group Exhibit I [8/24/00 memo from Elder to Green and Barget re vehicle loads, seeking direction re limiting access to pier; 1/22/02 Pier Committee memo to Board of Commissioners re proposed weight limits on Harford Pier and surrounding land area, with attachments and handwritten annotations by longtime pier heavy construction crew lead worker Henry Lepley; 6/15/04 memo from Barget re "Truck Damage" to rotten 30 year old stringers].)

When these efforts to enact weight limits and prohibit fish trucks failed, probably because even District recognized it had contractually guaranteed large fish truck access to Cohens in the leases (see Exhibit A [at Ex. B thereto]), the District began working with its designated fire protection agent CDF (see Exhibit J [8/28/01 Res. No. 01-10]) to stripe an 18' fire lane down the length of the Harford Pier which would ultimately be enforced to have the same result of prohibiting large commercial fish trucks from accessing the pier. (See Exhibit B.) Without applying for a coastal development permit or considering alternatives in light of the Coastal Act's mandatory requirements and policies, the District purported to consider several options to satisfy CDF's concerns, but actually considered just those options which would permit fish truck access only at the cost of eliminating public parking spaces (and thus public access) also guaranteed to the Cohens under their 1993 Settlement Agreement with the District. (See Exhibit K [6/22/04 Barget to Board Memo re Harford Pier Parking and Fire Lane and attached Options A-F].)

The options before the District in June 2004 conclusively demonstrated that it could have fully accommodated any fire safety concerns (i.e., a fire lane) without interfering with commercial fishing loading/unloading activities and public parking, by simply repairing the pier and/or relocating some skiff racks to other locations on the pier terminus. Options A and D, for example, could have preserved commercial fishing and public parking with little or minimal pier repair or relocation, while Option F could have done the same had only the District not allowed the east side of the pier terminus substructure to fall into such disrepair that it feared it would not support the trucks' weight, or if District had been willing to commit to properly repair and maintain it. (See Exhibit K, and attached schematic Options A, D and F.) The District rejected Options A and D, however, as well as other options which would have preserved fish truck and public access, purportedly due to cost considerations (even though Cohens volunteered to advance \$20,000 for the necessary work to be recouped through later rent deductions) and District's refusal to relocate skiff racks.

The District, working with its agent CDF, ultimately adopted a "shared use" plan which eliminated commercial fish trucks' traditional access to the pier (and eliminated any possible legal access at all unless they would park in and occupy existing public parking spaces during lengthy periods of loading and unloading). (Exhibit A [Complaint, at Ex. E].) The District's commission told Barry Cohen at a public meeting that there was no longer any place on the Harford Pier for the fish trucks to load and unload. After the District striped the fire lane and large trucks received two \$270 citations from CDF in September 2004 (see Exhibit L), for operating just as they had for decades, fish truck access ended and Cohens' wholesale/processing fish business on Harford Pier was forced to shut down. The Cohens firmly believe that the District used the fire lane issue as a pretext to skirt its contractual and Coastal Act obligations; even assuming fire lane enforcement is an appropriate safety issue, adequate space existed and exists on the Harford Pier to accommodate the fire lane, parking and loading on the pier terminus.

VI. CONCLUSION

Since September 2004, due to the District's and CDF's development, institution and enforcement of the newly-striped fire lane, large fish trucks have been unable to legally access the Harford Pier. As a result of this, and District's continuing and increasing hostility to commercial fisherman and fishing and its failure to maintain and repair areas of the Harford Pier critical to commercial fishing, commercial fishing boats no longer sell and offload their catches there. The filleters and other fish processing workers have lost their jobs, and the public no longer enjoys the experience of a unique, historic "working pier."

District's actions have completely destroyed the once bustling commercial fish industry at Port San Luis and shut down commercial fishing and related access at Harford Pier. Such actions are not authorized by District's existing coastal development permit, or any other approval from the Coastal Commission, and are in violation of the Coastal Act provisions and policies set forth above.

Cohens respectfully request that the Coastal Commission take all appropriate enforcement action to require the District to comply with its permit and the Coastal Act. The Commission should require its permittee, the District, to take the necessary steps to protect commercial fishing and public access, as required by law, by restoring the previously existing fish truck access to Harford Pier as soon as possible as well as performing the repair and maintenance work necessary to restore and use the historic Harford Pier's vessel tie up areas,

Steve Monowitz
January 10, 2006
Page 9

boat and pier protection devices (camels), and fish unloading areas. We thank you and the Coastal Commission in advance for your attention to these important issues.

Very truly yours,

MILLER, STARR & REGALIA



Arthur F. Coon

AFC:klw

Enclosures (via Overnight Mail)

cc: Martin P. Moroski, Esq., counsel for Port San Luis Harbor District
(w/encls., via overnight mail)
Ty Green, Esq., counsel for Port San Luis Harbor District (w/o encls.)
David Cumberland, Esq., counsel for Port San Luis Harbor District (w/o encls.)
Mike Harkness, California Department of Forestry & Fire Protection/
San Luis Obispo Fire Department (w/o encls.)
San Luis Obispo County Planning Department (w/o encls.)
Barry A. Cohen (w/o encls.)
Leonard A. Cohen (w/o encls.)
George B. Speir, Esq. (w/o encls.)
Gavin D. Whitis, Esq. (w/o encls.)

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ARTHUR F. COON

AFC@MSANDR.COM

June 20, 2006

Via Facsimile and U.S. Mail
(831) 427-4877

Steve Monowitz
District Manager
California Coastal Commission
Central Coast District
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Port San Luis Harbor District's Violations of Coastal Development
Permit and California Coastal Act Requirements In Eliminating And
Adversely Affecting Commercial Fishing Operations/Coastal Access On
Harford Pier

Dear Mr. Monowitz:

I have received and reviewed a copy of Thomas Green's June 5, 2006 letter to you regarding the above matter. Mr. Green's letter responds to your May 22, 2006 letter to the Port San Luis Harbor District through its attorney, Mr. Green, and its Harbor Manager, Jay Elder. Your letter advised the District that it violated the California Coastal Act's permit requirements by eliminating the semi-truck loading area that has historically been available on Harford Pier, and further stated that the District should immediately restore the loading zone area and apply for a Coastal Development Permit ("CDP") to make any changes to the loading zone needed to address public safety. Mr. Green's June 5, 2006 letter (1) fails to confirm the District will restore the historic semi-truck access necessary for the commercial fishing industry and facilities on the Harford Pier, (2) fails to confirm the District will submit a CDP application for any changes it believes are needed, and (3) disagrees – without citation of any authority – with your letter's conclusion that the elimination of the historic semi-truck loading area is "development" as defined by Public Resources Code ("PRC") section 30106, which broadly encompasses any "change in the density or intensity of use of land" or "change in the intensity of use of water or access thereto."

CRAA44158666157.1

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The District's rejection of the Coastal Commission's jurisdiction in this matter and continued violation of the Coastal Act's requirements is unacceptable, and its stubborn refusal to comply with the law in this regard is disturbing. Had the District complied with the Coastal Act's permitting requirements before taking action in 2004 to eliminate the fish semi-truck access, it would have been required to consider reasonable alternatives that would address public safety needs while also preserving or relocating the facilities on the Harford Pier that support commercial fishing or other coastal dependent uses. Having been advised of its violations more than six months ago, per my January 10, 2006 letter to you, copied to the District's counsel, CDF and the SLO County Planning Department, the District's continued refusal to acknowledge its violation and the Coastal Commission's jurisdiction in this matter, as well as its continued failure to apply for the necessary CDP in defiance of your letter and reasoned analysis, warrants the immediate issuance of a cease and desist order ("CDO"), and administrative fines as deemed appropriate by the Coastal Commission.

We believe a further site inspection is wholly unnecessary and should in no event be allowed to delay the Coastal Commission's taking immediate enforcement action, including, but not limited to, the issuance of a CDO. While we certainly have no objections to your visiting the Harford Pier again to view current conditions, so long as enforcement action is not thereby delayed, we respectfully request to be notified of and given an opportunity to participate in any such site inspection. We believe this is only fair so you may be advised of all pertinent facts regarding the existing pier terminus parking and loading configuration which was unilaterally selected and implemented by the District in May 2005, including its impacts on density and intensity of use and public access, its operational infeasibility, and its clear violation of the Coastal Act as well as the parties' relevant agreements.

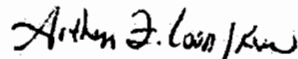
In sum, and unfortunately, the District has not been a good "partner" to the Coastal Commission regarding its required legal compliance with the Coastal Act. A special district is required, like any other person, to fully comply with the Coastal Act before undertaking development in the coastal zone. The District failed, and continues to fail, to do so, and its precipitous actions have eliminated previously existing fish processing/wholesale facilities serving the commercial fishing industry from the Harford Pier. Appropriate enforcement action by the Commission to require the District to comply with the Coastal Act should be promptly undertaken so that historic commercial fishing access and activities can be resumed on the Harford Pier at Port San Luis as soon as possible.

Steve Monowitz
June 20, 2006
Page 3

Thank you for your continued attention to this important matter.

Very truly yours,

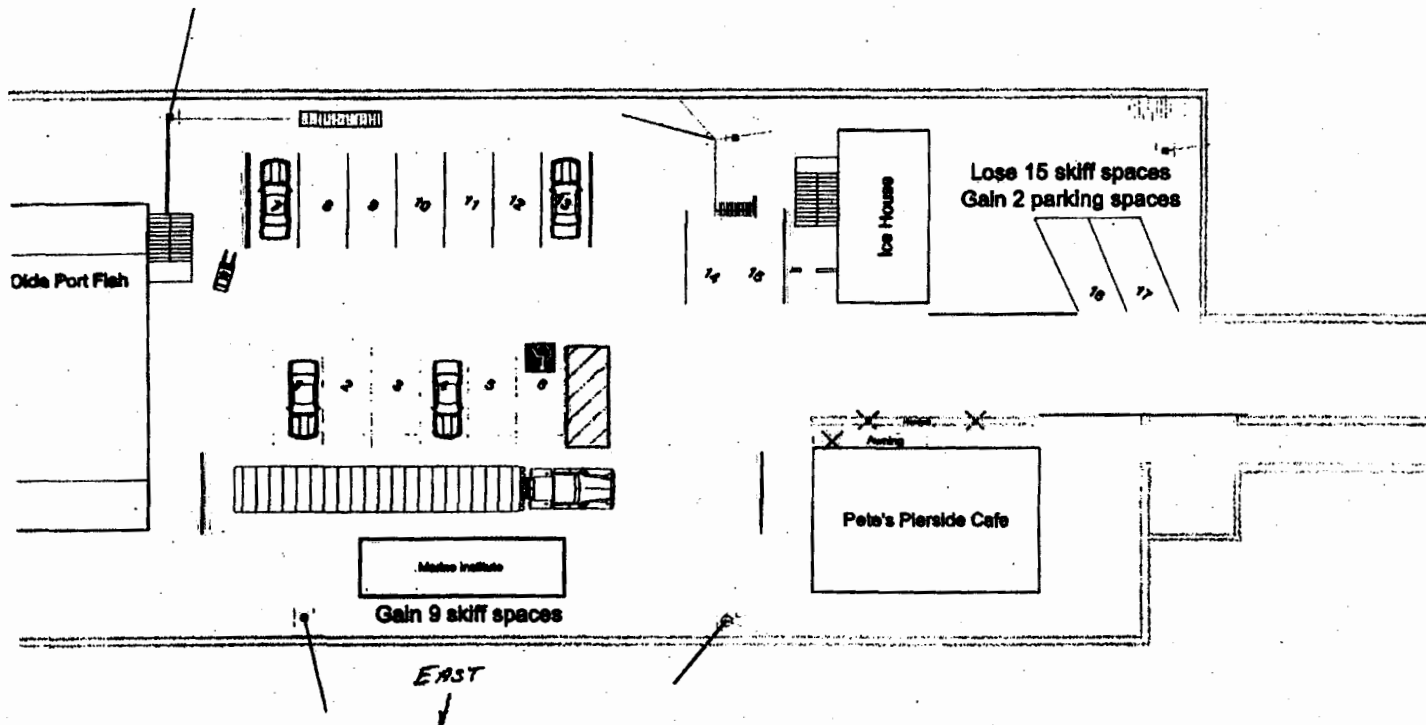
MILLER, STARR & REGALIA



Arthur F. Coon

AFC:klw

cc: Martin P. Moroski, Esq., counsel for Port San Luis Harbor District
Ty Green, Esq., counsel for Port San Luis Harbor District
David Cumberland, Esq., counsel for Port San Luis Harbor District
Mike Harkness, California Department of Forestry & Fire Protection/
San Luis Obispo Fire Department
San Luis Obispo County Planning Department
Barry A. Cohen
Leonard A. Cohen
George B. Speir, Esq.
Gavin D. Whitis, Esq.



ford Pier Parking

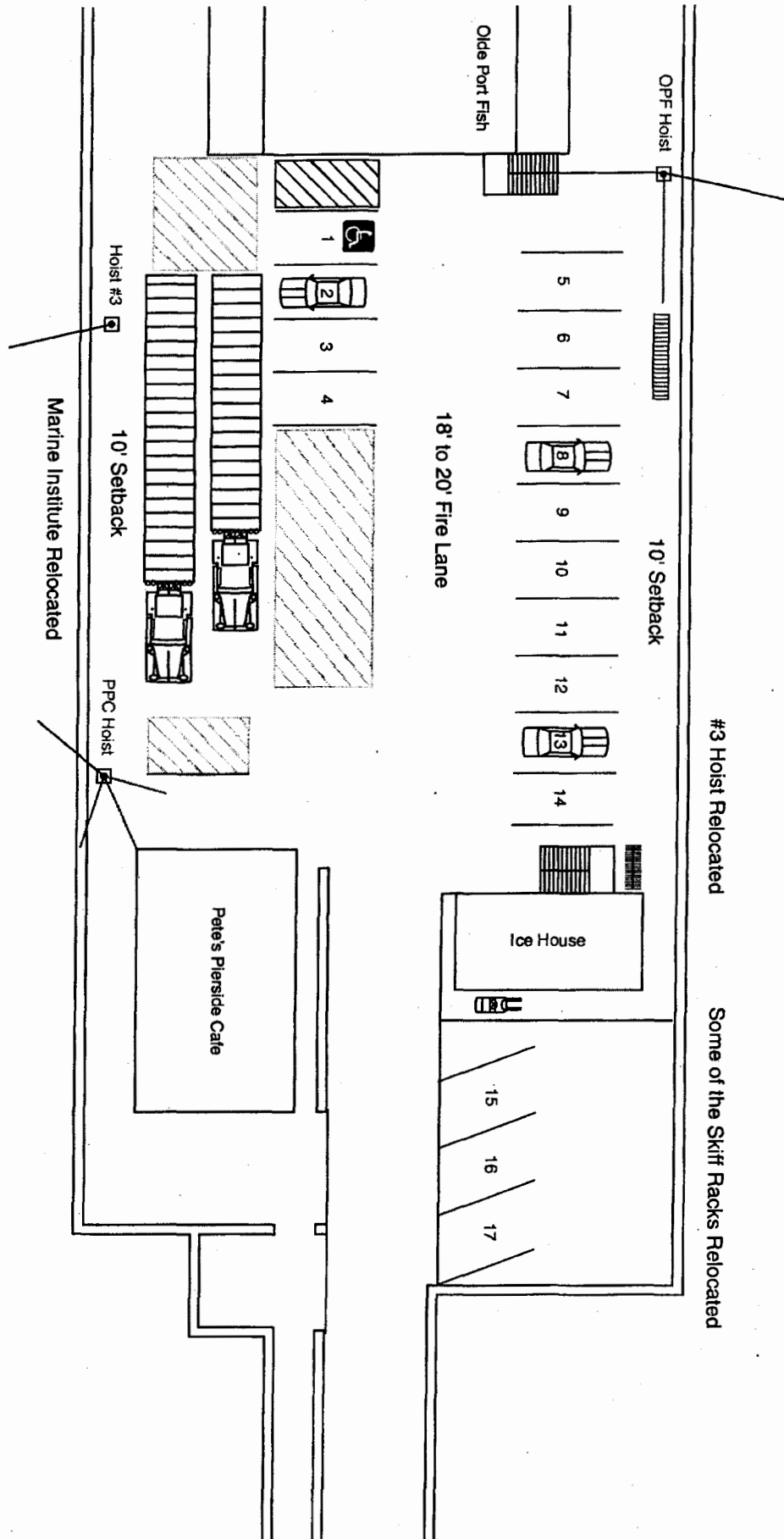
Option F

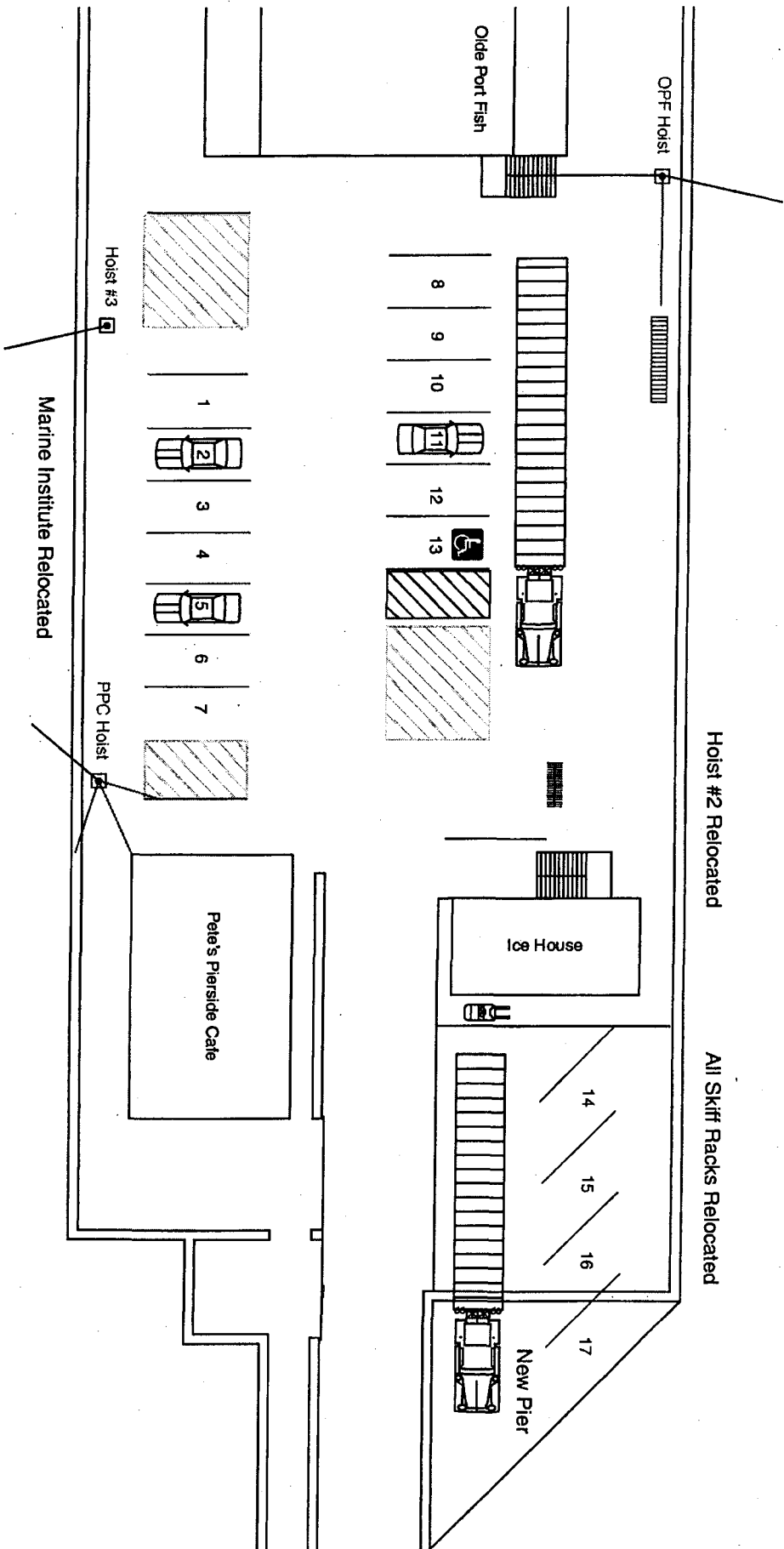
06/22/04

Ex 32-7

Scale: 1"=20'

Option A/F
(Harbor's Option with minor adjustments)





New Proposed Option

FILED
SAN LUIS OBISPO
SUPERIOR COURT

NOV 07 2006

COURT CLERK

DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

BARRY A. COHEN, LEONARD A.
COHEN; OLDE PORT INN, INC.; and
OLDE PORT FISHERIES, INC.,

Plaintiffs,

v.

PORT SAN LUIS HARBOR DISTRICT,
et al.,

Defendants.

Case No.: CV040897

STATEMENT OF DECISION ON
PLAINTIFFS' CLAIMS FOR EQUITABLE
RELIEF AND DEFENDANT'S CLAIMS
FOR EJECTMENT AND MONEY
DAMAGES ON BARRY COHEN'S
FAILURE TO PAY RENT [CCP § 632]

The Plaintiffs (Barry Cohen, Leonard Cohen, Olde Port Inn, Inc., and Olde Port Fisheries, Inc.) seek relief through several causes of action in equity, which were reserved (along with Defendant's claim for ejectment and money damages) for the court's decision by the parties' agreement and are addressed herein. The Defendant (Port San Luis Harbor District) argues that the Plaintiffs' requested relief is barred by certain findings by the jury which determined the legal causes of action. It is beyond serious dispute that while a jury may be utilized to provide an advisory verdict, it is the duty of the court sitting in equity to render its own independent findings, and that a court in equity may adopt, reject, or declare ambiguous a jury's findings as it deems

///

1 proper. (A-C Co. v. Security Pacific National Bank (1985) 173 Cal.App.3d 462, 473-
2 474) Interestingly, Plaintiff Barry Cohen also cites to certain jury verdicts as
3 conclusive of the issue of Barry Cohen's failure to pay rent. Both positions are
4 rejected. In Plaintiffs' case, the jury was not asked to specifically decide whether
5 Cohen was in breach of the covenant to pay rent and its finding as to Cohen's
6 performance of his obligation under the 1994 lease are ambiguous on this issue.

7 The Defendant has filed objections to all the evidence offered by Plaintiffs after
8 the jury verdicts. The only authority cited by Defendant is Code of Civil Procedure
9 section 607 which does not apply to proceedings in equity. Since a court in equity must
10 make an independent judgment regarding the facts, it is nearly axiomatic that such court
11 may receive evidence from the parties as it deems proper. Defendant's objections on
12 that ground are overruled. Defendant's objection to declarations by Arthur Coon are
13 sustained on the ground of relevance. The objection to the declaration by Frank Khalil
14 is sustained as it is comprised of irrelevant hearsay. The Defendant's objection to
15 Leonard Cohen's July 7, 2006 declaration is overruled as to observations he personally
16 made; it is sustained as to conclusions and opinions contained therein. Defendant's
17 objections to Leonard Cohen's July 14, 2006 declaration is sustained except that the
18 objection as to paragraph 5 is overruled as it comprises an admissible lay opinion.
19 Plaintiffs' objections to the declarations of Mssrs. Moroski, Green and McGrath are
20 sustained on the grounds cited by Plaintiffs.

21 Plaintiffs allege their Seventh Cause of Action wherein they assert that the
22 Defendant should be found to have violated the doctrine of public trust in failing to
23 maintain and repair the Harford Pier to the detriment of the public. The doctrine of
24 public trust is a protection for the public against the sovereign alienating real estate to a
25 private party in a manner which harms the public's interest in that property. In other
26 words, it is not a vehicle to question the sovereign's management of the property held
27 in trust; but, rather, it is a protection which prohibits the sovereign from alienating
28 (leasing or selling) trust property to private parties who then violate the public trust.

1 (Audubon Society v. Superior Court (1983) 33 Cal.3d 419) The court orders judgment
2 for Defendant on the Plaintiffs' Seventh Cause.

3 Plaintiffs allege the Fifth Cause wherein they seek declaratory relief regarding
4 the 1976 lease (Lease I), the 1998 lease (Lease IA), the 1994 lease (Lease II) and the
5 1993 Settlement Agreement. Plaintiffs also seek attorneys' fees and costs pursuant to
6 the terms of Lease IA, Lease II, and the Settlement Agreement. They allege the Sixth
7 Cause wherein they seek specific performance of the contracts enumerated above.

8 Declaratory relief regarding Lease I is denied for the following reasons. The
9 applicable portions of the 1976 lease which may have been breached are paragraphs 38
10 and 58. Plaintiffs have not established to this court's satisfaction by a preponderance of
11 the evidence that the Defendant breached paragraph 38 of this contract. The court does
12 find that Plaintiffs have established that the Defendant breached paragraph 58
13 (covenant of quiet enjoyment) in its failure to properly provide parking and truck access
14 as required in later contracts which further defined the parties' rights and obligations as
15 to Lease I. However, since the breach of paragraph 58 is established based on the
16 provisions of later contracts which relate back to the 1976 lease, declaratory relief as to
17 that older lease (Lease I) is unnecessary to achieve an equitable result. In addition,
18 specific performance on Lease I is denied as unnecessary to achieve an equitable result
19 because specific performance of later leases is granted in part as set forth hereinafter.

20 Plaintiffs seek declaratory relief as to Lease II (1994 lease). Declaratory relief
21 is granted to Plaintiffs on Lease II as follows. The relevant portions of Lease II are
22 paragraphs 6B, 13, 14, 15 and 16. The court finds sufficient evidence to establish a
23 breach of paragraph 6B in that Defendant has not maintained the public walkways as
24 required by the lease and specific performance will be ordered. In addition, the
25 Plaintiffs have established that Defendant breached paragraph 14 of that lease in that
26 Defendant has failed to provide adequate truck access to Plaintiffs so that Plaintiffs can
27 operate the fish business. The court will grant partial specific performance of this
28 provision as hereinafter set forth to the extent that truck access is affected by the

1 Defendant's breach of the parking space obligations contained in Lease II. The court
2 finds that the Defendant expressly acknowledged and agreed to provide reasonable
3 truck access, and the court further finds that the Defendant has unreasonably effectively
4 denied adequate truck access to Plaintiffs' fish business by reason of poor management
5 of the public parking. Specific performance of Lease II is granted in part as to fish
6 truck access only in conjunction with the order regarding the parking space obligations.
7 The court finds insufficient evidence to order declaratory relief as to Plaintiffs'
8 assertions that Defendant breached its obligations under the repair and maintenance
9 provisions of Lease II and the court also denies specific performance of those terms.

10 The Defendant's Cross Complaint seeks relief under Lease II (1994 lease). The
11 Defendant's First Amended Cross Complaint contains the Third, Fourth and Fifth
12 Causes of Action. The Third, Fourth and Fifth Causes all relate to Barry Cohen's
13 alleged breach of the 1994 lease for failure to pay rent and the Defendant's request that
14 he be ejected and the lease terminated.

15 The Defendant argues that the Defendant's obligations (covenants) are
16 independent of Barry Cohen's covenant to pay rent. While that may be true as to some
17 of the obligations, the court finds that it is clearly not true with respect to the parking
18 obligation. The 1993 Settlement Agreement is between the Cross-Complainant
19 (District), Cross Defendant (Barry Cohen), Olde Port Inn and Olde Port Fish Co. The
20 1993 Settlement Agreement contains various parking space promises by Defendant to
21 Plaintiffs and it provides for liquidated damages of \$2,000 per month to Plaintiff from
22 Defendant in the event Defendant fails to comply with the parking promises before the
23 new facility is built (1994 lease). Further, the agreement at paragraph 1.2 provides that
24 Defendant's failure to provide the parking would damage Plaintiff but that the damages
25 would be difficult to determinc. The court finds that these provisions establish two
26 facts: (1) that the parties agreed that damages for parking failures would be difficult to
27 determinc and (2) that the parking provisions were critical to the value of the 1994
28 lease. Thus, the court finds that the plain language of the Settlement Agreement make

1 it very clear that the parking space promises were essential to the value of the 1994
2 lease because District's failures to provide adequate parking would reduce Cohen's
3 rent, or if no rent is due, would pay him money damages. (See Exhibit D to
4 Defendant's July 7, 2006 Brief.) Indeed, once the facility was built (1994 lease)
5 paragraph 1.1 of the Settlement Agreement further protected Plaintiffs from
6 interruption of parking space availability beyond certain levels, again with liquidated
7 damages. The court therefore finds that the Defendant's parking space obligations were
8 conditions precedent to Cohen's obligation to pay rent. The court orders judgment for
9 Plaintiff and against Defendant on the Defendant's Fourth Cause on the cross complaint
10 (Ejectment). The court rejects the anticipated argument that the 1994 lease came after
11 the 1993 Settlement Agreement and thus created an independent covenant to pay rent.
12 (E.g., 1994 Lease, ¶ 18.k.) The court finds that the plain language of the Settlement
13 Agreement (section 2.2) provides that the parties will enter into the 1994 lease to
14 provide the specific terms of the rental of the new facility which is the subject of that
15 lease. Thus, the parties clear intent was to agree to the 1994 lease to facilitate the effect
16 of the Settlement Agreement.

17 However, Cohen does remain on the premises and he still operates the business.
18 The court finds that Cohen's decision to leave the wholesale business was in part due to
19 Defendant's breaches of the parking obligations and the resulting difficulty experienced
20 by fish truck operators to service the fish business. The court also finds that depleted
21 fish business opportunities in the United States at relevant times and Plaintiffs'
22 participation in the Mexican venture established other reasons for the reduced
23 operations of the fish business. The court also finds that Cohen's business was reduced
24 from some thirty-plus employees to three or four employees from June 2004 to this
25 date. Based on the above-described evidence the court finds that, on balance, it is fair
26 that Cohen owes the Defendant one-half of the rent claimed. The court therefore orders
27 judgment for Defendant in part on the Third Cause. Defendant's Fifth Cause request
28 for declaratory relief is similarly granted in part as to the Third Cause and denied as to

1 the Fourth Cause. The parties are to calculate any interest which is owed (which cannot
2 exceed the rate of interest allowed by applicable California law); late fees are excluded
3 due to Cohen's substantial justification in his failure to pay the rent because the court
4 has determined that Defendant breached the parking space and fish truck access
5 obligations. The rent obligation will continue to be half of the amount otherwise due
6 under the 1994 lease until Defendant has specifically performed its obligations as
7 ordered by this court.

8 Plaintiffs request declaratory relief as to the 1993 Settlement Agreement. The
9 court has found that Defendant breached the 1993 Settlement Agreement and, therefore,
10 the court grants declaratory relief to Plaintiffs as set forth below. Although Defendant
11 may have breached other provisions of the agreement, the court shall focus on provision
12 1.1, the parking agreement which the court has determined was a major part of the
13 agreement. The court finds that the Defendant breached the agreement in this respect.
14 Plaintiffs request specific performance of this provision. The court will grant specific
15 performance to Plaintiffs as hereinafter set forth only as to the terms of the 1993
16 Settlement Agreement and 1994 lease (Lease II) that require the Defendant to provide
17 17-20 parking spaces on the pier terminus and fish truck parking in addition to those
18 public parking spaces. The plain language in paragraph 14 of the 1994 lease provides
19 for Defendant's obligation to allow fish truck access and the parties acknowledge that
20 the fish business "requires regular truck access." (1994 lease, paragraph 14)

21 The court finds that the evidence presented by Plaintiffs established by a
22 preponderance of the evidence that, although seventeen (17) or eighteen (18) parking
23 spaces have been defined by markings on the terminus, Defendant's have failed to
24 enforce the parking restrictions and limits. Specifically, paragraph 1.1 of the
25 Settlement Agreement requires the Defendant to enforce parking space time limits.
26 Plaintiffs presented sufficient evidence to establish that Defendant's efforts in this
27 regard were sporadic and ineffective. Further, the court finds that the fire lane-related
28 events, not fully recounted herein, either rendered unavailable any defined parking

1 spaces which happened to be unoccupied when a fish truck would arrive or required the
2 trucks to occupy a prohibited fire lane.

3 Defendant objects to any specific performance. The Defendant argues that the
4 Plaintiffs had an adequate remedy at law because they sought damages from the jury
5 and were largely unsuccessful and that the fact that damages were not awarded was not
6 because the damages claimed were difficult to determine. The court disagrees, and
7 finds that money damages were not awarded for breach of parking space obligations
8 because they were difficult to determine and that the jury's failure to award money
9 damages is not necessarily based on lack of causation. The court rejects Defendant's
10 argument that the verdict form wording compels the conclusion that the jury found that
11 Defendant's breach did not cause damages. The jury might well have rendered their
12 verdict as recorded only because they could not arrive at a supportable amount. In any
13 event, the jury's failure to do so does not bind this court for reasons previously
14 described and because any such jury finding was ambiguous as to the reason no
15 damages were awarded. Indeed, as previously noted paragraph 1.1 and 1.2 of the 1993
16 Settlement Agreement contains an agreement by Defendant that two categories of
17 parking space failures would cause damages to Cohen (described as the restaurant, fish
18 business and Barry Cohen) which would be "extremely difficult to determine." That
19 was true in 1993 and it is true now. (Civil Code § 3389 provides that specific
20 performance is not precluded because a contract contains a liquidated damages clause.)

21 To the extent that the jury found that Plaintiffs were not entitled to money
22 damages as a result of Defendant's breaches, Defendant argues that Plaintiffs are
23 thereby precluded from equitable relief because proved harm is a required element of
24 such relief. That argument simply lacks merit. Defendant's Exhibit M to its Selected
25 Authorities Cited in District's Memorandum of Points and Authorities in Opposition to
26 Plaintiffs' Request for Equitable relief sets forth the elements of specific performance
27 and such a requirement is not present; nor is its absence cited as a reason to deny
28 specific performance.

1 Further, Defendant argues that since Barry Cohen was awarded past damages,
2 that award precludes equitable relief. The argument lacks merit in this case just as it
3 did in Tamarind Lithography Workshop, Inc. v Sanders (1983) 143 Cal.App.3d 57. In
4 Tamarind, the terms of the agreement were clear, the contract reasonable, and the
5 ordered remedy was similar in character to that set forth in the contract. The jury in
6 Tamarind awarded damages to the date of judgment and nothing for future damages.
7 More importantly, the Tamarind court found that future breaches would likely lead to
8 further litigation. The court ruled that Plaintiff therein was entitled to damages and
9 injunctive relief. (Tamarind v. Lithography Workshop, supra, 143 Cal.App.3d 571,
10 578) Although ruling on a case of dissimilar facts, the Tamarind court cites numerous
11 cases for the proposition that damages and equitable relief can both be ordered. (Id. at
12 p. 578, fn.7)

13 The Defendant also argues that specific performance of any contract term
14 ordered would entail burdensome court supervision and an uncertainty on Defendant's
15 part regarding the specific nature of its obligations. Plaintiffs cite to Ellison v. Ventura
16 Port District 78 Cal.App.3d 574. That court cited a number of cases when specific
17 performance was denied for the reasons argued by Defendant. (Id. at p. 580) However,
18 the court opined that such a doctrine is archaic and that it should not be unduly
19 extended. (Id. at p. 581) The Defendant argues that specific performance would be
20 unfair to the District because it is a public entity with limited resources and numerous
21 other responsibilities. However, the court finds that the parking obligation and the
22 promise of quiet enjoyment (reasonable fish truck access) were entered into by
23 Defendant and that Plaintiffs are entitled to specific performance of the Defendant's
24 obligations with regard thereto. The court further finds that, as in Ellison, the
25 Defendant's complaints that such orders would interfere with their board's legal
26 authority and discretion, are too expensive, and would be unfair, lack merit and all such
27 arguments are rejected.

28 ///

1 The Ellison court held that the required dredging provided more value to the
2 purchase agreement. In the case at bar, it is clear from the plain language of the
3 Settlement Agreement that the parking obligation was a major issue which Plaintiffs
4 sought to resolve therein. The evidence at trial from expert testimony established that
5 adequate parking was critical to the optimum operation of the restaurant and of the fish
6 business. The parties, as early as 1976, agreed in that lease that the business should be
7 operated to provide maximum revenues to both Plaintiffs and Defendant. (Paragraph 4,
8 1976 lease) It is a matter of common sense (and the subject of expert testimony at trial)
9 that if parking spaces became unavailable or fish trucks are unable to access the
10 businesses, Plaintiffs' profits and Defendant's revenues will not be maximized.
11 Paragraph 1.1 of the Settlement Agreement requires that Defendant provide sixteen
12 alternate parking spaces if any interruption occurs as a result of maintenance and
13 repairs, again confirming the critical importance of the availability of parking spaces.
14 The evidence at trial established that alternate locations of parking spaces on the
15 terminus were limited; therefore, the court interprets this provision to require that such
16 alternate spaces during interruption could not be located on the terminus and thus that
17 they would be located on the Harford Landing. It is based on this finding that the court
18 makes its orders described herein related to the Harford Landing parking restrictions
19 which Defendant has enacted in favor of boat trailers and recreation vehicles.

20 Plaintiffs argue that other obligations in the 1993 Settlement Agreement and the
21 1994 Lease (especially the maintenance and repair terms) should be enforced. In
22 Ellison, supra, the court handled this argument so that a court of equity is able to
23 provide only orders that can be justified on the facts and be effectively enforced:

24 "It is fundamental that a court of equity cannot make a contract for
25 the parties (Pasqualetti v. Galbraith) (1962) 200 Cal.App.2nd 378,
26 383 [10 Cal.Rptr. 323]), and if specific performance is ordered, the
27 decree should as nearly as possible require performance in
28 accordance with the terms of the contract. (Ellis v. Mihelis (1963)
60 Cal.2d 206, 220 [32 Cal.Rptr. 415, 384 P.2d 7].) It does not
follow, however, that a court of equity is required to enforce the

1 contract completely, or not at all. Where it is possible to bring
2 about substantial justice by adjusting the equities between the
3 parties, a court of equity can grant relief. (Lobdell v. Miller, (1952)
114 Cal.App.2d 328, 344 [250 P.2d 357].) (Id. at p. 582)"

4 Thus the court denies Plaintiffs' claims for declaratory relief and specific
5 performance of the maintenance and repair obligations contained in the contracts.
6 Plaintiffs were unable to establish to this court that Defendant's actually breached the
7 maintenance and repair provisions (except for the walkway).

8 The court denies all requested declaratory relief or specific performance of the
9 1998 lease in that the obligations which may have been breached are either duplications
10 of the breaches discussed above or were not proved by Plaintiff.

11 Therefore, the court orders Defendant to perform its obligation to provide
12 adequate parking on the terminus. The Defendant is ordered to reconfigure the defined
13 parking spaces in accordance with either Option D or Option F of Trial Exhibit 32 so
14 that the Plaintiffs and the other businesses will have access to at least 17 nonexclusive
15 public parking spaces and that commercial trucks would be allowed one space for
16 temporary stoppage which does not block the public parking spaces or the fire lane on
17 the terminus. If either Option D or F would allow a second space, even if that second
18 space blocked parking, Defendant is ordered to provide such a space for a second truck
19 to stop temporarily on the terminus. Defendant is further ordered to repair defined and
20 undefined public walkways from the Harford Landing to the end of the terminus so that
21 visitors and customers can safely pass upon them. The Defendant is further ordered to
22 ensure that parking spaces adjacent to the pier landing, i.e., in the Harford Landing
23 area, are not designated as exclusive parking for recreational vehicles or boat trailers to
24 the exclusion of automobiles. Defendant is ordered to begin work described above
25 within 30 days from final judgment.

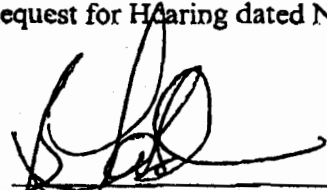
26 All further requested equitable relief is denied. Where the court has granted
27 equitable relief by way of specific performance, Plaintiffs have established their
28 entitlement to the orders made herein pursuant to Civil Code sections 3390(5), 3391,

1 and 3392, and all other relevant or applicable law. Plaintiffs' request for injunctive
2 relief is denied in all respects because Plaintiffs failed to establish that such relief is
3 necessary to achieve a just result to their claims. The court has denied all other
4 requested relief either because Plaintiffs have not proved the contracts are sufficiently
5 certain in those respects (Civil Code 3390(5)) or because the remedy at law was
6 adequate. Where the court has granted relief to Plaintiffs as herein ordered the court
7 has found that Plaintiffs' remedy at law was inadequate for the reasons described
8 herein. Except for the obligation to maintain public walkways, other asserted
9 maintenance and repair obligations were not sufficiently certain to allow for specific
10 performance. The court does not address the parties' requests for costs and attorneys'
11 fees as such issues will be raised by noticed motion pursuant to statute. Both Plaintiffs
12 and Defendant are directed to prepare and submit to opposing counsel and the court as
13 provided by statute a proposed Final Judgment disposing of all causes of action of the
14 parties in accordance with this Statement of Decision, the court's prior rulings on
15 summary adjudication, and other matters, and the jury's verdicts.

16 Defendant's electronically mailed Request for Hearing dated November 2, 2006
17 is denied as unnecessary.

18 ///

19 DATED: November 7, 2006


20 BARRY T. La BARBERA
21 Judge of the Superior Court

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NOV 09 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



POINT SAN LUIS

LIGHTHOUSE KEEPERS

November 8, 2006

California Coastal Commission
c/o Charles Lester, Deputy Director
725 Front Street, Suite 300
Santa Cruz, California

RE: Port San Luis Harbor District Master Plan; access to Lightstation by water.

Dear Commissioners:

The Point San Luis Lighthouse Keepers (LHK), strongly urge the Commission to retain the potential for access by water to the Lightstation.

LHK is the non-profit organization responsible for the restoration, conservation and interpretation of the Point San Luis Lightstation to the public. The current staff report recommends that water access be limited to the point of being negligible by modification of Lightstation policy #3 (Mod 41 pg.19).

Our position is based upon three major points:

- Access by water was the primary means of arrival and provisioning of the Lightstation from its inception in 1890 to the construction of the single lane road in the late 1950s. This is part of the Lightstation's history.
- The utilization plan endorsed by the National Park Service when it deeded the land to the Harbor District included specific reference to access by water. Item 11 states in part: "Stairs from the beach to the bluff-top...will be constructed." Further studies are to be conducted "with the goal of constructing public access facilities by water...". In fact to this end the Coastal Commission received in trust significant money from PG&E to improve coastal access including specifically by water.
- The Lighthouse Keepers have incorporated access by water as one of the three routes (the other two being the road and Pecho Coast Trail) in meeting both their trust to the public by getting them to the Lightstation and allowing special events which may include boating to Whalers Beach and approaching the Lightstation facilities by this historic route. This approach will be especially valuable to young people learning of our history and the environment.

In conclusion, we support the concepts of environmentally sensitive design and provision of all studies necessary to gain coastal permits for appropriate access from the shore. We believe that the potential for water access should be preserved; that simply precluding any meaningful access (for example denying consideration for stairs) both ignores the historic use of this area and limits our operational potential in bringing the public to the Lightstation and all its great visual and education benefits.

Sincerely,

Andrew G. Merriam, Chairman

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NOV 13 2006

Avila Business Association
PO Box 488
Avila Beach, California 93424

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Th9a
Position: In Favor/
Comment

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, California 95060

**Re: Th9A, San Luis Obispo County LCP Amendment No. SLO-MAJ-1-05 Part 1
(Port San Luis Harbor District Master Plan)**

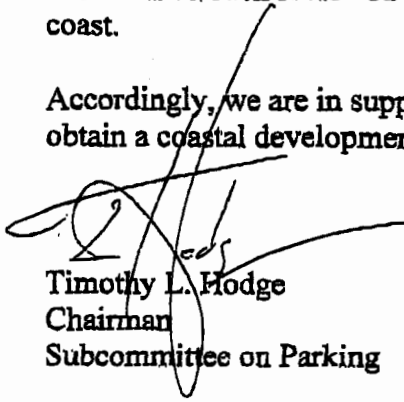
Dear Commissioners:

The purpose of this correspondence is to express the Avila Business Association's support for the Commission Staff's recommendation on San Luis Obispo County's proposed amendment to the Land Use Plan (LUP) that any "substantial increases" in parking fees at the Avila Parking Lot should require a coastal development permit.

In our opinion, the current \$5.00 parking fee at the Avila Parking Lot has substantially restricted access to coast and diverted parking into residential neighborhoods. We hear over and over again from our customers and members of our community that the \$5.00 parking fee is already prohibitive. Any increases, unchecked, could limit access even more, not to mention hurt the town financially.

It is our further opinion that the Port San Luis Harbor District's (PSLHD) decision to raise the parking fees from \$2.00 to \$5.00 during the Unocal Remediation has slowed the economic development of the "new" Avila Beach. The fact that the PSLHD's decision to raise the rate was made before any of the businesses had started to rebuild, very few residents were living in town, the beach was closed, and no one was there to offer opposition makes us wonder whether the parking fee increase from \$2.00 to \$5.00 (which would be labeled a "substantial increase" under the Staff's current recommendation) should have been reviewed by the Commission as it seems to have limited access to the coast.

Accordingly, we are in support of the recommendation that the PSLHD be required to obtain a coastal development permit prior to any substantial increase.



Timothy L. Hodge
Chairman
Subcommittee on Parking

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COASTAL COMMISSION
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California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, California 95060

Th9A**Position: In Favor**

**Re: Th9A, San Luis Obispo County LCP Amendment No. SLO-MAJ-1-05 Part 1
(Port San Luis Harbor District Master Plan)**

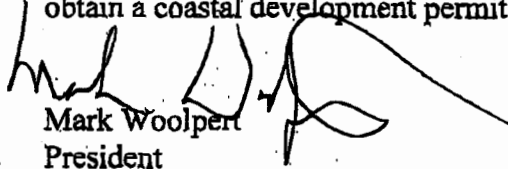
Dear Commissioners:

The Old Custom House/Mr. Rick's is providing this correspondence to express their support for the Commission Staff's recommendation on San Luis Obispo County's proposed amendment to the Land Use Plan (LUP) that any "substantial increases" in parking fees at the Avila Parking Lot should require a coastal development permit.

We feel the current \$5.00 parking fee at the Avila Parking Lot has substantially restricted access to coast and diverted parking into residential neighborhoods. We have heard from our potential customers in the community that they will leave Avila Beach when on-street parking is full rather than pay \$5.00. We also feel that any substantial increase over \$5.00 would be devastating.

It is our further opinion that the Port San Luis Harbor District's (PSLHD) decision to raise the parking fees from \$2.00 to \$5.00 during the Unocal Remediation has slowed the economic development of the "new" Avila Beach. The fact that the PSLHD's decision to raise the rate was made before we, and other local businesses, had the opportunity to rebuild, very few residents were living in town, the beach was closed, and no one was there to offer opposition makes us wonder whether the parking fee increase from \$2.00 to \$5.00 (which would be labeled a "substantial increase" under the Staff's current recommendation) should have been reviewed by the Commission as it seems to have limited access to the coast.

Accordingly, we are in support of the recommendation that the PSLHD be required to obtain a coastal development permit prior to any substantial increase.



Mark Woolpert
President

The Old Custom House, Inc. doing business as
The Old Custom House/Mr. Rick's

404 Front Street, P. O. Box 6, Avila Beach, California 93424

Phone: 805.595.7555, Fax: 805.595.9508

www.oldcustomhouse.com

NOV 08 2006

Coastal Commission
Attn. Michael Watson

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Nov. 3, 2006

Re.: Proposal from the city of Pismo Beach on Secondary Dwelling Units within Coastal Commission jurisdiction.

We would like to address the issue of secondary dwelling units in the St. Andrew's area of Shell Beach. We applaud the changes recommended by the city of Pismo Beach and understand the need for an increase in affordable housing.

The city of Pismo measures slope by the average slope of the entire lot. Many homes on the inland side of Highway 101 are built on slopes. The ocean side of 101 has far fewer slopes and building on them would:

- change the historic style of the area
- be bad for the land
- cause a hazard to already densely populated neighboring sites
- create parking confrontations
- create access problems for emergency vehicles
- complicate evacuation procedures

Most lots with slope on the ocean side of 101 are L shaped lots. The front, flat parts of the lots already have homes on them. The rear sections of the lots slope sharply toward the highway. An **average** slope does not take into account the actual dangers and complications of building on a 45 degree angle. Therefore we would like the city to use the measurement of the actual **building pad** and not an average slope for the lot.

One case in our area is particularly upsetting. A homeowner who has never personally lived here has rented out her R-1 house to vacationers with no regard to actual residents. She is planning a second story on the original 1200 sq. foot home, and is also planning an 1190 sq. foot, two story "granny unit". The plans for the granny unit were conducive to making it two

additional rentals since plans included outdoor entrances to both levels. The second home would be built on pile-ons on a 45 degree slope. The average lot slope is 23%. A lot split on this property was attempted in 1991. The city denied the request citing the steep slope. The Coastal Commission was against it because of the trees and wildlife habitat. The remaining pine on the slope has pitch canker. The California pepper trees were removed a couple of years ago.

The size of this particular lot is 10,090 square feet. The proposed changes limit size of secondary units to 600 sq. feet in lots of less than 10,000 sq. ft. For a lot of 11,000 sq. feet, two 1200 sq. foot homes is excessive, especially when one would be on the slope described, and the homeowner has never lived here.

We would greatly appreciate your addressing further the slope measurement, the unit and lot size, the parking issues, the density and evacuation hazards, and/or the emergency vehicle access problems in this neighborhood. The city is currently attempting to regulate the rental issues. Thank you so much for your attention to our concerns for safety, quality of life and neighborhood character.

Frank + Heidi Paciano 109 Naomi Ave.

Marian Gregory 105 Naomi Ave.

Sherie + Jeff Watkins 116 Naomi Ave.

Alita Whittemore 117 Naomi Ave

Don Whittemore 117 Naomi Ave

Cerini C. Bess 111 Naomi Ave.

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877

Th10a



Date: November 14, 2006
To: Commissioners and Interested Parties
From: Steve Monowitz, District Manager *SM 11/15/06*
Katie Morange, Coastal Planner
Subject: Addendum to 10/26/06 Staff Report Prepared for the 11/16/06 Hearing (Agenda Item Th10a) Regarding the Julia Pfeiffer-Burns State Park Waterfall House Landscape Maintenance Project (Appeal No. A-3-MCO-04-064)

This addendum modifies the staff report dated 10/26/06 regarding the Julia Pfeiffer-Burns State Park Waterfall House Landscape Maintenance Project (Appeal No. A-3-MCO-04-064). Staff continues to recommend approval of the project subject to the following clarifications to the staff report. Deleted text is shown in ~~strikethrough~~, and new text is shown in underline.

Staff has revised recommended Special Condition 3, as shown below, in order to retain the County condition 2, which requires the applicant to record a notice identifying the County's action on the permit application:

II. Addition of a footnote for clarification on page 12 of the staff report (after first reference to RMP on page 12). Subsequent footnotes to be renumbered consistent with this change.

III. Revisions to footnote 2 on page 22 of the staff report.

The reference to the RMP in footnote 2 on page 22 has been revised as follows to be consistent with other references to the RMP in the staff report:

² Since the County originally had told State Parks that no permit was required, no biological reports were submitted prior to work conducted in July, August and September of 2002. However, once the County determined that a permit was necessary due to work on slopes over 30%, and within 100 feet of mapped ESHA, the County indicated that biological surveys were required. Thus the Biological Assessment was completed in May 2003, and incorporated into

an updated Resource Management Plan dated December 2003. State parks also contracted Dr. Richard A. Arnold, of Entomological Consulting Services Ltd, an expert on sensitive butterfly species, to conduct habitat assessments and presence/absence surveys for Smith's blue butterflies and to evaluate the suitability of existing habitat for Monarch Butterfly over-wintering sites. Results of Mr. Arnold's work, submitted in a letter report dated November 11, 2003, were also incorporated into the ~~updated~~ Resource Management Plan, prepared April 5, 2002 and updated December 2003.

IV. Supplement to Findings on pages 28 and 29 of the staff report.

In order to provide the Commission with adequate information regarding the contents of the Restoration and Mitigation Plan required by Special Condition 1, the following additional details have been added to the ESHA de novo findings of the staff report.

(page 28, paragraph 4)

In order to ensure full compliance with the LCP, the applicant has prepared a detailed restoration plan that addresses these LCP inconsistencies. The Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan (dated August 8, 2006, prepared by Rana Creek Habitat Restoration) augments the RMP and monitoring program and includes detailed restoration methods (including plant lists and quantities for each treatment area), erosion control measures, monitoring goals and procedures, success criteria, and reporting guidelines.

Specifically, the plan states that the majority of erosion control and restoration seeding will be done from seed with a hydroseeder or by hand broadcasting, and planting of live plants will occur where natural regeneration of vegetation does not occur and where revegetation can be assisted by the planting of live plants grown in State Parks nursery facilities. Seeds will be gathered from within JPBSP, and the plan includes nine tables which detail the conditions at the nine treatment areas and the type of plants to be used in direct planting efforts, including the number of individuals and the size of nursery specimens for each treatment area. The plan also includes descriptions of qualitative and quantitative monitoring methods that will be utilized for the project. Qualitative standards focus on the establishment, recruitment, and maintenance of representative species of existing northern coastal scrub and willow riparian plant communities, and will be measured by periodic photo monitoring. Quantitative standards will be determined by the development of a sampling regime using a grid overlay that is placed on a map of the treatment areas showing at least 100 roughly equal subdivisions which will be assigned random numbers from 1-100. Within the grids, the nearest four plants will be identified in each of the four directions, and with this data, occurrence and density of each species can be calculated. Northern coastal scrub restoration and mitigation will be considered successful when specified plants are fully established and growing vigorously. Approximately 80% of specified plant species shall occur within the mitigation areas after five years with intermediate criteria of 60% at the two-year and 70% occurrences at the four-year intervals. Similar success criteria for willow riparian habitat and invasive plant cover are included in the plan. The plan indicates that State Parks personnel will monitor the treatment areas and submit reports (with both qualitative and quantitative

monitoring results) on an annual basis for at least three years to Monterey County and the Coastal Commission, and will continue on an annual basis until the minimum standards have been achieved.

This restoration and mitigation plan proposed by State Parks meets what the Commission normally requires for restoration plans where resource impacts and mitigation are anticipated. Special Condition 1 requires implementation of the Restoration and Mitigation Plan as part of the project in order to ensure full consistency with the LCP. In addition, Special Condition 2 requires evidence of USFWS review and approval of the project, or a statement that no review or approval is necessary, to provide conclusive evidence that the project will not impact Smith's blue butterfly habitat.

(page 29, paragraph 3)

The Mitigated Negative Declaration prepared for the project found that the trees felled on the slope above McWay Cove could slide down over time and drift into the ocean, and logs and debris in the nearshore environment could adversely impact organisms and species in this area. However, the analysis found no evidence that any damage had occurred from previously felled trees, and that the new vegetation planted in that area after the trees were felled has taken hold and removal of the trees at this point could result in greater impacts to the tidewaters from erosion. Nevertheless, in order to reduce any potential impacts of allowing the trees to remain on the slopes, County conditions require the applicant to remove all felled trees and plants on the slope above McWay Cove and revegetate bare areas of the slope with native plants, in accordance with the required restoration and erosion control plans (County Conditions 8, 9 and 10). The erosion control plan prepared by State Parks (dated December 5, 2003) for the project contains a brief description of general erosion control measures that will be taken to protect soil exposed during vegetation removal. To further protect against sedimentation and other impacts to the nearshore and intertidal habitats below the project site consistent with the LCP, Special Condition 1 requires inclusion of the additional erosion control measures contained in the Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan.

Specifically, the Restoration and Mitigation Plan describes erosion control measures to be utilized at each of the nine treatment areas in order to ensure full containment of offsite runoff as a result of soil disturbing activities. The plan requires all denuded areas and areas subject to soil disturbance to have erosion control measures continuously applied between October 15 and April 15. A primary goal of the plan is full containment of offsite runoff as a result of soil disturbing activities. The erosion control measures include:

- cover crop seeding: direct seeding site specific seed that establish quickly protecting soils from wind and rain;
- straw wattles: netted straw tubes placed on contours and staked;

- erosion blankets: straw, coir, and/or jute used with seed and mulch to cover and protect exposed slopes. Blankets will be installed to protect the prepared soil surface of steep slopes and banks where applicable, and are used to temporarily stabilize and protect disturbed soil from rain impact and surface erosion, the increase infiltration, decrease compaction and soil crusting, and to conserve soil moisture (blankets also protect seeds from predators, reduce dessication and evaporation by insulating the soil and seed environment). Prior to installation of erosion blankets, the seedbed must be prepared, and u-shaped wire staples, metal geotextile stake pins, or triangular wooden stakes used to anchor mats to the ground. (The plan also provides details for installation of erosion control blankets on steep slopes.);
- mulching: layering straw, wood chips, mulch, compost, leaves or other organic matter;
- rolling waterbars: berms placed on the diagonal designed to effectively drain road and trail surfaces to prevent erosion and sedimentation;
- rip-rap or other impact-reducing mechanisms such as emergent plants to dissipate the potential cutting energy or water collected and conveyed prior to dispersal;
- filter berms along drainage ways to filter out and collect sediment and dissipate the cutting energy of drainage water; straw bales are recommended around drainage ways during the winter. Small gaps (approximately 1-2 inches wide) must be left in between the bales for effective passage of drainage water
- willow wattles: willow poles placed in mass to prevent scour, capture sediments, and increase channel stability

Only as conditioned can the project be found consistent with the LCP.

IV. New Violation Finding to be inserted on page 35 of the staff report.

In order to provide further clarification regarding the violation associated with the project, staff recommends that the following finding be added on page 35 of the staff report (following Section 4. Access and Recreation).

5. Violation

Approximately half of the vegetation removal work under the Landscape Maintenance Project occurred on the project site prior to issuance of a CDP. As described above, once the County determined that a CDP was necessary, the applicant was required to cease work until a permit could be obtained. Coastal Commission enforcement staff opened violation case # V-3-02-030 on September 5, 2002 in response to this unpermitted development, and subsequently engaged in discussions with State Parks and Monterey

County to resolve the violation. State Parks submitted an application to Monterey County for a CDP and, on December 5, 2003, the County filed the application as complete. The Monterey County Board of Supervisors subsequently approved the project was September 28, 2004, with conditions to ensure consistency with LCP requirements, in order to resolve after-the-fact development. This is the common approach to resolving unpermitted development in Monterey County's jurisdiction, and typically resolves the Coastal Commission violation on the matter. However, in this case, the County's approval was appealed to the Commission, and as detailed in this report, the approval raised substantial LCP consistency issues with regard to ESHA. Additional conditions have been added to the County's approval to address these issues, and Commission approval of approval this permit will resolve the violation.

Coastal Commission consideration of this application by has been based on the certified LCP and access policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

BRISCOE IVESTER & BAZEL LLP

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CENTRAL COAST AREA

November 16, 2006

New Appeal – Agenda Item 10(a)

A-3-MCO-04-064

Joseph and Nancy Schoendorf

Friends of the Big Sur Coast

Deny Permit Request

November 13, 2006

Katie Morange
State of California – The Resources Agency
California Coastal Commission
Central Coast District Office
Suite 300
725 Front Street
Santa Cruz, CA 95060

Dear Ms. Morange:

Thank you for circulating this letter and the enclosed exhibits to each member of the California Coastal Commission.

Perhaps the most serious violation of the Coastal Act since its passage is before you November 16. It is perhaps the most serious violation for two reasons. The first is the astonishing environmental degradation done by the Violator. The second is that the Violator should know better than any other resident of this State the requirements of the law that it so blatantly violated.

The Violator felled nearly 3,000 trees on the coastal bluffs of Big Sur, some having diameters of 10 feet or more. The Violator bulldozed those trees over the sides of the cliff through chaparral dominated by seacliff buckwheat, the host plant, and only host plant, for the endangered Smith's Blue Butterfly. The Violator destroyed that habitat. The Violator did all this without complying with law in even the remotest sense. The Violator did not seek a single permit required for such damaging acts. It did not seek, nor did it obtain, a 404 permit from the Corps of Engineers for the discharge of material into the coastal-bluff streams that are waters of the United States. The Violator did not comply with the Endangered Species Act by seeking an

Katie Morange
November 13, 2006
Page 2

appropriate "take" permit; in fact it egregiously violated the Endangered Species Act by destroying endangered species and their habitat. The Violator did not obtain the necessary entitlements from the State Lands Commission for despoiling the state tidelands at the base of the bluff. Hauled-out harbor seals may have been crushed to death or maimed by the falling massive logs. The Violator did not comply with the California Environmental Quality Act. The Violator thumbed its nose at the California Coastal Act, and at the responsibilities of this Commission. The facts of these repeated and serial violations of federal and state laws are nowhere mentioned.

To look at what this Violator did, please see our web site: www.friendsofthebigsurcoast.com. I write you because these facts appear nowhere in your packet. The fact that these acts may well be the most egregious violations of the Coastal Act ever are not told you. You are being asked to bless these acts, give them your approbation, after the fact, and pretend that nothing illegal happened. In your staff report on this matter you will find no mention of these illegal activities. The activities are described as though they are benign--no, in fact, they are described as though they were environmentally altruistic activities. And they are described as though they had not yet happened.

There is not a word in the restoration plan or staff report about how steep the cliff is. How can anyone trust the promises that these giant, dead trees will be removed from slopes too steep to walk up? How can anyone trust the promises that the cliff will be revegetated when the restoration plan never mentions erosion?

The Violator should be the best-informed entity in this State on the requirements of law for performing such severe activities. The Violator has a fine and prominent lawyer. In fact it has the same fine and prominent lawyer that your Commission has. The Violator is one of your sister state agencies. But you are the members of the Commission, and it is for you to decide whether certain entities, in this case your sister agencies, may commit illegal environmental degradation with impunity, while you mete out Draconian penalties to others.

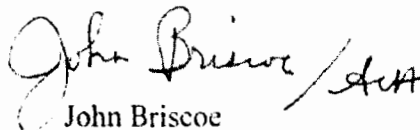
We trust you will be even-handed in your law-given right to protect and enhance the state's natural and scenic coastal resources. We trust you will punish the Violator as forcefully, and excoriate it as acidly, as if it were some rogue foreign corporation behaving just as illegally. We trust you will do so out of an innate sense of justice, but we trust you will do so as well out of the knowledge that if you avert your eyes from these environmental crimes, if you allow them to go unpunished, if you and the Violator high-five each other at your next Cabinet meeting in

Katie Morange
November 13, 2006
Page 3

Sacramento, you and your Commission will have forfeited any further moral authority, and just perhaps your legal authority, to wreak your wrath on another violator again.

You should deny the request for a coastal development permit and take an enforcement action against State Parks.

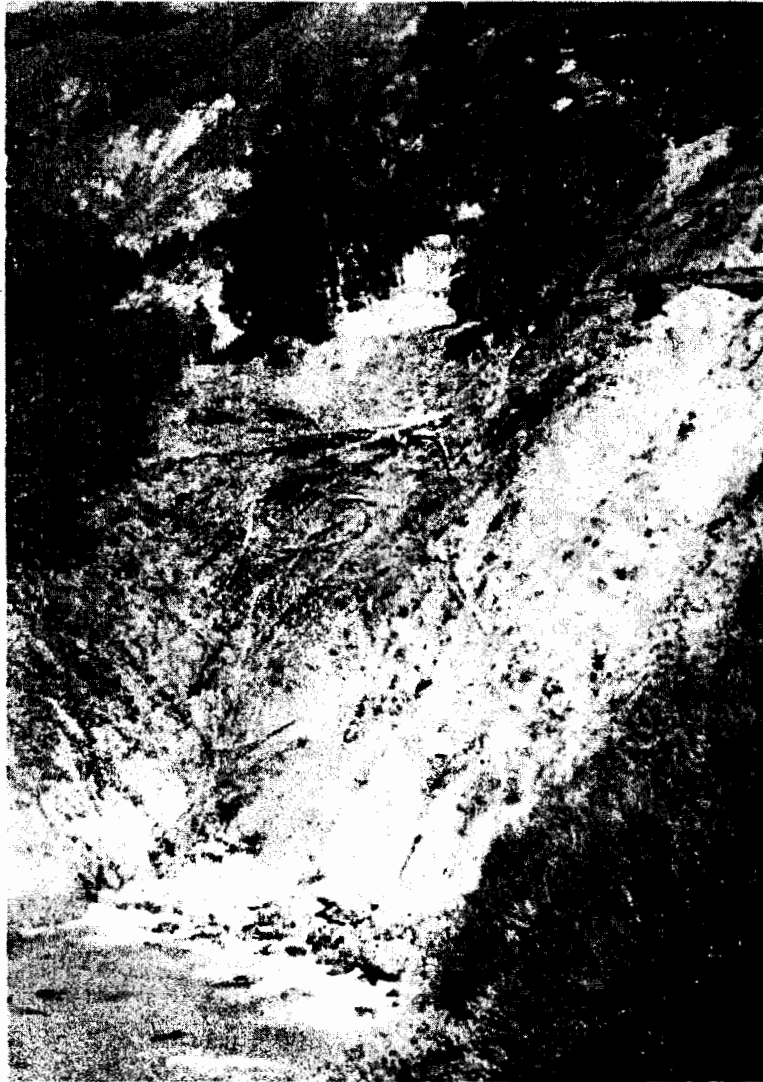
Sincerely,

A handwritten signature in cursive script, appearing to read "John Briscoe", followed by a diagonal slash and the letters "JH".

John Briscoe
On behalf of Joseph and Nancy Schoendorf and
Friends of the Big Sur Coast

Enclosures

EXHIBIT A



Dozens of large eucalyptus trees lay fallen over the seaside cliff destroying critical endangered species habitat before some slid down to the beach battering the pristine intertidal zone during winter storms

EXHIBIT B



November 1, 2006

John Gilchrist & Associates

ENVIRONMENTAL CONSULTANTS

Ms. Anne Arnold
Briscoe Ivester & Bazel LLP
155 Sansome Street, 7th Floor
San Francisco, CA 94104

**RE: Response and Comment—Waterfall House Landscape Maintenance Project
Restoration Plan**

Dear Anne:

At your request, I reviewed the Waterfall House Restoration Plan prepared by Rana Creek Habitat Restoration, dated August 8, 2006. The Plan was evidently prepared at the request of California Coastal Commission (CCC) staff to address possible impacts of exotic species removal at Julia Pfeiffer Burns State Park. The following comments address general content and specific items contained in the Plan.

General Comments:

1. The Plan is a good, generic restoration plan that has general guidelines that would be applicable to almost any Central Calif. Coast property. Entirely missing, except for plant species recommendations, are how these general guidelines relate to this particular site. For instance, extremely steep slopes (75-90%) with exposed baserock (no soil mantle) exist over most portions of this site. What specific site preparation, erosion control and revegetation techniques are needed to insure success under these conditions? What schedule or timetable would be followed for various restoration steps?
2. The County Coastal Development Permit requires removal of existing logs and future trees to be cut. There is no indication in Plan of how logs will be removed from steep slopes, how native plants will be protected (except for some general listing of possible measures on p.7), no indication of specific erosion control that might be needed after removal, or discussion of how removed trees and wood debris would be disposed.

Specific Comments:

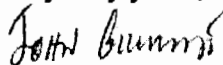
1. p.1, last sentence, para. 2: "This Restoration and Mitigation Plan has been prepared at the request of CCC staff to fully offset potential impacts to indigenous vegetation and sensitive habitats from the Landscape Maintenance Project." Because the Plan lacks information on "potential impacts to indigenous vegetation" it is impossible to determine whether the Plan will accomplish this goal. The Plan (p.5) says no direct or cumulative impacts to sensitive plant or animal taxa or communities, or marine environment, will occur from the project. As indicated below, this conclusion may not be true. If Plan preparers contend there are no sensitive species or communities, or impacts to ocean environment, why is this a goal of the Plan?

2. p.3, 2nd para., 1st sentence: "Once the trees are cleared, it is predicted that the vegetation will rapidly shift to indigenous plant species." This is contradicted by other statements in Plan describing difficulties in eradicating invasive species, as well as actual experience in Big Sur area with eucalyptus, acacia and pampas grass eradication. These species and others listed in Table 1 take years of continued labor to control, and additional years to fully eradicate, before they no longer compete with indigenous species. Absent from Plan is specific control measures for invasives, treatment schedule and overall timeline for eradication of specific species.
3. p.3, 2nd para., 2nd sentence: "Recent surveys indicate that indigenous vegetation has recruited in tree removal areas and is the dominant cover." The Plan should indicate where those areas are. Our observations indicate that 2002 tree removal areas are still covered with logs, tree debris, sprouting or remaining invasives and have very little native cover.
4. p.2, 2nd para., 1st and 2nd sentences: "Temporary impacts to migratory birds, invertebrates, and mammals will result from tree removal.... Direct impacts to species discovered ... shall be avoided." Migratory birds are considered sensitive species by Calif. Dept of Fish and Game. There is no information in Plan on specific species that might be encountered at this site, and how impacts to species, other than breeding birds, will be avoided.
5. p. 4, 1st para.: "Event winter rains can create runoff.... By implementing erosion control, bioremediation ... water quality impacts can be minimized. In addition to surface treatments, micro-topographic relief shall be placed in key locations to intercept storm water runoff...." It would be helpful if the Plan specified types of water quality impacts that would be expected and exactly how they will be minimized. It is not clear what "micro-topographic relief" measures the author(s) are referring to, or how/ where they would be used.
6. p.4, 2nd para., 4th sentence: "Any buckwheat plants growing in the project area will be flagged and protected during tree removal..." Seacliff buckwheat is a sensitive species in that it is the single host plant to the federal endangered Smiths' blue butterfly (SBB). With binoculars, we observed mature buckwheat plants within the downed eucalyptus in fall 2002, although Dr. Richard Arnold did not observe Smiths' blue butterflies in summer 2003. Dr. Arnold documented buckwheat in areas adjacent to the tree removal sites, and State Parks has planted seacliff buckwheat in a revegetation area at the Brown Waterfall House site, so it should be assumed that seacliff buckwheat exists within the project area. In the Plan, buckwheat protection measures are vague, and protection of adult butterflies or other SBB life forms are completely missing. In addition, because Smiths' blue butterfly is protected and regulated by US Fish and Wildlife Service, the law requires a consultation process with that agency. This should have been conducted prior to finalizing this Plan. It is incorrect to conclude (p.5) that the project will have no [potential] impacts to sensitive plant or animal communities.

7. p. 4, 3rd para: "Invasive Species" Control of invasive species is a key component to success of the restoration effort. Herbicide use is discussed, and some manual methods are referred to (p. 7) but missing are specific treatment measures for specific species as well as follow-up and contingency measures if primary treatment is not effective.
8. p. 6, 2nd para: "Bio Remediation" Bio-remediation, including use of mycorrhizal fungi and mulch, is an effective component of native revegetation, but missing from plan is how and where specific techniques will be used. (The hydroseeding discussion (p 12) does include a mulch and mycorrhizal spec. but the mycorrhizal rate is low.)
9. p. 7, 1st para.: "Straw bales, tree limbs and wood chips may be used to protect the soil and plants during the tree removal process." Further discussion of these techniques is needed. Much of the native vegetation is on very steep slopes and it is difficult to imagine how straw bales, tree limbs and wood chips would be transported and secured to protect plants/ soil, and in the case of wood chips how protection is afforded.
10. p. 9-11, Erosion Control: Text provides a list of generic erosion control measures but Plan does not indicate how or where specific measures would be applied
11. p. 12, Irrigation and p.26 Irrigation: p. 12 indicates irrigation shall not be applied, while p.26 says "Project Manager shall be responsible for providing adequate water to planted plants to assure their survival and growth..." Generally some dry weather irrigation is needed during the 2-3 year establishment period for native plants. The Restoration Plan should include an irrigation plan if that is being recommended.
12. p. 17. More information is needed on why no revegetation is recommended for Area 8 which has a 2000 sq. ft. soil disturbance area from vegetation management.

I believe this documents major concerns contained in this Plan. Please don't hesitate to contact me if you have any questions.

Very truly yours,



John Gilchrist

Restoration Ecologist

Certified Professional in Erosion and Sediment Control # 0590

cc: John Briscoe, Briscoe Ivester & Bazel

Response to California Coastal Commission Staff Report, 10/26/06

Anne:

My major points are contained in my letter to you (11/1/06) responding to the latest JP Burns Restoration Plan. These haven't changed after reviewing the CCC staff report.

Other issues:

- Smith's Blue Butterfly Habitat (p. 26-28). We still disagree with Dr. Arnold and the CCC staff report that the habitat quality for Smith's blue butterfly within the project site is poor. We observed Smiths blue butterfly on buckwheat within coastal scrub at Mc Way Headlands (offsite but close to southerly tree removal areas), and we observed buckwheat within the logging slash near the Waterfall House. So, in our opinion, there was some higher quality SBB habitat that was removed by the vegetation clearance, and with SBB in the immediate project vicinity, there was a potential impact on this endangered species. The staff report (p. 28) says "the project poses inconsistencies with LCP policies that call for assurances of long term maintenance of [butterfly] ESHA." I think we would agree with this sentence. But the next paragraph indicates the Rana Creek Restoration Plan addresses these inconsistencies through revegetation, monitoring and reporting. Although the Plan suggests planting seacliff buckwheat, there are no provisions for monitoring successful recolonization by Smiths' blue butterfly. Long term maintenance measures are absent. Thus I don't think a conclusion of ESHA success can be made.
- Nearshore and Intertidal Habitat (pgs. 15 and 28-29): We still have no discussion in any document about how downed trees and vegetative debris will be removed, particularly on very steep lower slopes below Overlook Trail. Nor is there specific discussion on how environmental problems from removal will be controlled. The general erosion control measures in SP Erosion Control Plan and in the Rana Creek Restoration Plan do not provide indication of specific measures used on these slopes, and therefore do not lead to a conclusion that there will be "no sedimentation and other impacts to the nearshore and intertidal habitats below the projects site consistent with LCP..." (p. 29).
- Nearshore and Intertidal Habitat: I don't believe Coastal staff has come to correct conclusion that tree cutting and leaving logs on slopes last 4 years hasn't disrupted habitat value of ESHA. We have photos of logs on beach and intertidal zone which had to have impacted those habitats. Their photo (Exhibit 8- April 2006 shows logs just above the intertidal zone. The sequence of photos between 2003 and 2006 show that logs resting on beach and near the shore earlier are now gone. Acknowledgment of those impacts and consequent effects on the ESHA are raised in my 2/28/03 letter to John Briscoe and in your appeal but are absent from the staff report. And, the staff report didn't deal with other contaminants

carried downslope with sediment or independent of sediment, such as allelopathins, tannins and other by-products of non-native tree decomposition, impacting the sensitive intertidal habitat.

- The performance standard for water quality is extremely weak, and is not dealt with at all in the CCC staff report. The Restoration Plan, under "Water Quality Sampling and Analyses" (p.19), says "The project manager shall maintain a log of inspections as required,..." No where in the Plan is any reference to water quality sampling measures or types of water quality analyses to be conducted. In Plan "if potential pollutants are identified on site, a potential pollutant report shall be recorded and action taken..." The Plan suggest that photographs would be taken during rain events, but photos cannot identify specific contaminants if there is no water quality program. "In areas where chain saws, equipment and trucks are maintained, A Fuel Containment/Spill Prevention Weekly Inspection Checklist will be maintained." A checklist is not going to prevent spills—a physical barrier or off site storage location should be specified. Also, the Plan and staff report do not deal with use of herbicides and possible negative effects on water quality and nearshore habitats.

I believe the staff report raises other issues (outside of biology) associated with Coastal Act and CEQA compliance which I assume you are dealing with. Please call me if you have any questions.

John Gilchrist.

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NOV 14 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Th 10a
P.O. Box 264
Big Sur, Ca. 93920
11 November 2006

California Coastal Commission
Central Coast District Office
725 Front St., Suite 300
Santa Cruz, Ca. 95060

Re: Appeal Number A-3-MCO-04-064

Dear Commissioners:

I strongly support your decision and that of Monterey County to permit the removal of the above trees from our South Coast.

These trees were NON NATIVE, highly flammable imported eucalyptus. State Parks did residents and visitors a huge service - ocean views were restored and the land made available to return natives.

Eucalyptus can be used for firewood, dog beds or home displays in a vase. Their odor, pleasant to many humans and even medicinal would terrify a Smith's blue butterfly who prefer buckwheat.

Friends of Big Sur might review County regs. I could find no reference that permits were even permitted to remove non-native plants or trees.

I challenge the Friends of the Big Sur Coast to perhaps volunteer to work with the Parks to devise a landscape plan to replace the eucalyptus with natives. Use the money you pay your lawyers to beautify our coast.

Sincerely, .


Lorri Lockwood

Th 11a



MONTEREY BAY

Unified Air Pollution Control District
serving Monterey, San Benito, and Santa Cruz counties

AIR POLLUTION CONTROL OFFICER
Douglas Quetin

24580 Silver Cloud Court • Monterey, California 93940 • 831/647-9411 • FAX 831/647-8501

November 8, 2006

DISTRICT BOARD MEMBERS

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Santa Cruz
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Monterey County

Susan Craig
California Coastal Commission
725 Front St.
Suite 300
Santa Cruz, CA 95060

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NOV 09 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Santa Cruz Harbor Channel Dredging

Dear Ms. Craig:

The Air District regulates the Santa Cruz Harbor's dredging operation and has issued a Protocol governing the operation particularly as regards hydrogen sulfide emissions. This Protocol limits H₂S to levels below the existing California standard (30 ppb on an hour average) and requires the Harbor to terminate dredging for the day any time they reach the specified levels (4 minutes of 15 ppb or 1 minute of 60 ppb).

The Harbor has proposed a new configuration for its dredge discharge that will significantly reduce the possibility of H₂S releases by pumping the sediments into the under surf zone. This new configuration substitutes for the majority of discharge to the dry beach, where H₂S episodes are much more likely to occur. The proposed configuration will comply with the requirements of the Protocol, and we believe that the protection it offers to the public is superior to the dredge practices of the past.

If we can be of any help to the Coastal Commission in this matter, I hope you'll not hesitate to call me.

Sincerely,

Ed Kendig

Ed Kendig
Compliance Division Manager



California Regional Water Quality Control Board Central Coast Region

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Linda S. Adams.
Secretary for
Environmental Protection



Arnold Schwarzenegger
Governor

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November 7, 2006

NOV 13 2006

CALIFORNIA
GOVERNMENT COMMISSION
CENTRAL COAST AREA

Brian Foss, Port Director
Santa Cruz Port District
135 5th Avenue
Santa Cruz, CA 95062

Dear Mr. Foss

**SUBJECT: ADDITIONAL CLARIFICATION TO JANUARY 21 and 28, 2005
AMENDMENTS TO DECEMBER 13, 2000 TECHNICALLY CONDITIONED WATER
QUALITY CERTIFICATION FOR SANTA CRUZ INNER HARBOR ANNUAL
DREDGING MAINTENANCE PROJECT, SANTA CRUZ COUNTY**

The Central Coast Regional Water Quality Control Board (Water Board) issued the Santa Cruz Port District a technically conditioned water quality certification for the Santa Cruz Harbor Annual Dredging Maintenance Project on December 13, 2000. In letters of January 21 and 28, 2005, amending that certification, Water Board staff set forth wind criteria for dredging and near-shore disposal events for inner-harbor material. The goals of the wind criteria were to ensure that dredged material would be disposed in a way that simulated natural discharge conditions, mix the material to the maximum extent, and minimize human contact. The resulting wind criteria follow:

- At inner harbor Area 1, where dredge materials are greater than 80% sand, the Port District shall dispose of dredge material at a time when wind speeds near the harbor are greater than or equal to 8 miles per hour from between 100° and 270° magnetic.
- At inner harbor Areas 2A, 2B, 3A, and 3B, where dredge material is less than 80% sand, the Port District shall dispose dredge material at a time when wind speeds near the harbor are greater than or equal to 15 miles per hour from between 120° and 240° magnetic.

The District indicates that it is effectively prevented from dredging because the criteria are so seldom met. The Water Board now understands that the Port District wants all wind criteria eliminated and replaced with conditions that are not wind-based, but that still achieve Water Board staff's original goals of reduced human contact and appropriate mixing and dispersal.

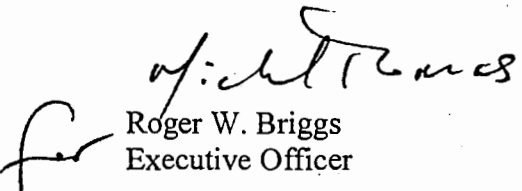
The District also points out that the onshore wind criteria is exactly opposite of the offshore wind direction the Monterey Bay Unified Air Pollution Control District prefers, which mitigates hydrogen sulfide emissions from decaying seaweed. Furthermore, harbor dredging demonstration project findings from 2001 and 2005 show that distribution of fine-grained material appears to be only slightly improved with offshore wind, and in all winds, fine-grained material does not remain in the nearshore for significant periods.

Water Board staff agree that the wind criteria are interfering with the District's ability to accomplish its mission of maintaining operations through dredging. Staff also believes that wave action and littoral currents have been shown to be sufficient to disperse fine sediments and prevent impacts to beneficial uses. By removing the wind criteria from the technical conditions of the Certification, and by adding the following condition to address the potential for human contact, Water Board staff hereby amends the December 13, 2000 technically conditioned certification:

When the Port District is dredging inner-harbor material (less than 80% sand content) and disposing of material through the offshore pipeline, operations will be shut down when any body-contact recreational users (e.g. surfers, swimmers) are present from the east jetty to the 9th Avenue beach, and will only resume when surfers are no longer in the water.

If you have any questions regarding this matter, please call Peter von Langen at (805) 549-3688.

Sincerely,


Roger W. Briggs
Executive Officer

cc:

Clyde Davis, U.S. Army Corps of Engineers
401 Program Manager, State Water Resources Control Board

Brian Ross, U.S EPA Region IX

Deirdre Hall, Monterey Bay National Marine Sanctuary

Ed Kendig, Monterey Bay Unified Air Pollution Control District

Susan Craig, California Coastal Commission

S:\Section 401 Certification\Certifications\Santa Cruz\Santa Cruz Harbor\Winds amendment.doc

October 26, 2006

To the California Coastal Commission,

I would like to offer some comments for your consideration regarding the Santa Cruz Harbor dredging disposal operations. I graduated with Honors in Environmental Studies from UC Santa Cruz. I wrote my Senior Thesis on Santa Cruz Harbor Dredging Operations for which I received the Dean's Undergraduate Award for the Division of Social Sciences. I am also a professional surfer and frequent visitor to the Harbor Beach Area. Some of these comments I have mentioned in prior correspondence but I would like to restate them here.

The California Coastal Commission needs to require the Santa Cruz Harbor to maintain offshore disposal of the dredge material. The last few years (prior to 2004) the Santa Cruz Harbor has predominately disposed of its dredge material offshore from the beach approximately 70 meters from the shoreline, which has been beneficial to mitigate the nuisance of the Hydrogen Sulfide gas (H₂S), as well as supply sediments for an offshore sandbar. The dynamic action of waves breaking on this sandbar has dispersed the sediments in an even distribution toward the shore, providing beach nourishment and allowing the littoral drift of sand to continue its natural course along the coast. This offshore sandbar has also created a quality surfing wave, which has been a great bonus to the surfing community, and improved the recreational quality of Harbor Beach and Twin Lakes State Beach. Disposing of the dredge material through the offshore disposal pipe has, by almost all accounts, been the most ideal and effective solution to minimize adverse effects resulting from the Harbor's dredging activities.

However, during the last two years' dredging seasons (November 1, 2004 to May 1, 2006) the Santa Cruz Harbor has predominately discharged its dredge material directly onto the shore. Their justification for this action has been for "beach nourishment" purposes, but it has also caused another problem to become overwhelmingly apparent, the presence of Hydrogen Sulfide gas. The presence of this gas causes most people who come into contact with it to suffer eye irritation, feel light-headed, dizzy, or nauseous, even when subjected to it for only ten minutes or so, and it is strong enough to make me want to leave to go to another beach. I have personally felt these symptoms at least a half dozen times last year, and it is a disgrace to allow Santa Cruz Harbor to ruin the beach environment in this manner. In previous years, while dumping offshore and underwater, the Hydrogen Sulfide nuisance was mitigated. With the last couple years' onshore disposal actions, the offshore sandbar and surfing wave have disappeared and the rotten egg smell of the Hydrogen Sulfide has become so overwhelming that Harbor Beach is no longer a place of recreational value.

Beach replenishment is a reoccurring theme that the Harbor has attempted to use for justification of onshore disposal of dredge material, but this justification holds no merit for onshore disposal but instead actually helps support offshore disposal of dredge material. The onshore disposal creates an unnatural distribution of sediment while offshore disposal actually places the sediment back into the littoral coastal transport path from which it is obstructed by the west jetty. This removal of sediment from the littoral cell by the west jetty has built Seabright Beach while starving the downcoast beaches of Capitola of sand, but it can be reintroduced through offshore disposal. This would create a more natural distribution of sediment not only at Harbor Beach and Twin Lakes Beach,

but for the downcoast beaches as well. The Harbor's interpretation of beach replenishment should not include huge mounds of sediment clumped onto the shoreline and flattened by tractors that permanently reside on the beach.

Harbor Beach has been designated a Recreational Use Beach, but this designation is unable to be fulfilled when a pipe stretches the length of the beach resting on the surface of the sand limiting access for children, the elderly, or disabled persons. The biggest problem with the onshore disposal is the presence of the nauseating Hydrogen Sulfide gas which is not only a State Regulated neurotoxin, but also removes any recreational value from this beach. The dredge disposal pipe should be buried under the sand along the east side of the small east jetty and stretch offshore underwater so as to allow access to the beach and realize its recreational value for everyone.

The Harbor should consider splitting the anchored offshore pipeline in a Y-formation and extend the outfall farther east of the current disposal location. This will allow the disposal location to be transferred from one outlet to the other when disposal depth becomes too shallow, along with moving the sediment mound farther east away from the Harbor Entrance, and maintaining the distance from shore. Nearshore, unanchored pipes will not realistically be able to accomplish sediment disposal goals in such a dynamic wave environment. I also wonder about other potentially toxic and carcinogenic compounds that are released into the air which we have yet to discover. The beach and harbor visitors, community, and local residents should not be test subjects for consistent exposure to harmful compounds.

Offshore disposal mitigates all problems that have arisen from the Harbor's desire to dredge onshore, from the Hydrogen Sulfide gas to the sediment distribution for beach replenishment. I know that the Monterey Bay Unified Air Pollution Control District, the Central Coast Regional Water Quality Control Board, and the Monterey Bay National Marine Sanctuary all want to maintain the Recreational Use Designation for Harbor Beach and could see this realized through requiring offshore disposal of dredge material. With all of the other compounding problems associated with onshore beach disposal, it seems that offshore disposal would be the most logical and ideal long-term solution for everyone involved. Keeping the dredge disposal pipe offshore at its current distance from shore (approx. 70 meters) is the condition that must be adopted.

I hope that the California Coastal Commission's Staff Report will recommend that the Santa Cruz Harbor be required to maintain offshore disposal of its dredge material.

Thank you for your time and consideration regarding this matter.

Sincerely,

Zachary Keenan

zacharykeen@hotmai.com

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NOV 14 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Agenda Item: Th11a
Permit Amendment: 3-05-065-A2
Comments From: Kathy A. Shortley
Position: Opposed

November 13, 2006

Chairman and Members of the
California Coastal Commission
c/o Charles Lester, Deputy Director
Central Coast District
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Commission

Thank you for the opportunity to respond to this Notice of Proposed Permit Amendment. I appreciate being a recipient of this very important information.

The following outlines my objection and comments regarding proposed amendments to Permit No: 3-05-065-A2:

Summary

▪ NO DREDGING IN OCTOBER

- October dredging will lessen public access to enjoy the beneficial and recreational uses of a pristine, beautiful, serene environment at Harbor/Twin Lakes State Beach. This precious experience will be reduced to only 5 months out of the year.
- The Santa Cruz Port District keeps increasing the dredge season; first from 4 to 6 months, and now to 7 months. (For the past two dredge seasons, they have extended the season into May, which would increase it to 8 months out of the year.)
- See attached photos dated 10/28/2006 showing the public enjoying the warm weather (without dredging) at Twin/Lakes Harbor beach.

▪ NO DISPOSAL OF INNER (NORTH AND SOUTH) HARBOR SEDIMENTS INTO THE NEARSHORE ENVIRONMENT DURING THE MONTH OF OCTOBER

- The proposed 3-pipe system by the Santa Cruz Port District will lessen public access to enjoy the beneficial and recreational uses of the Harbor/Twin Lakes State Beach.
 - Pipes obstruct public access; tractor will need to maneuver pipes to various locations, possibly throughout the day, which creates a public nuisance (noise, obstruction and exhaust).

- The ocean water will be darkened and polluted (even if dredged at night) with the following constituents:
 - Sulfides
 - Metals
 - Organic Compounds
 - Butyltins
 - Chlorinated Pesticides
 - Semi-Volatiles
- Steve Watt, Marine Geologist, Sea Engineering, Inc. (SEI) states the following in his letter to the Santa Cruz Port District, dated 8/14/06:
 - “Our opinion focuses on how the pipeline modifications ‘may’ affect the offshore dispersal of fine-grained sediment dredged from the inner harbor and into the surf-zone at Twin Lakes Beach.”
 - “The high energy environment of the surf zone may pose structural issues to the pipeline which should be thoroughly investigated before proceeding with the proposed configuration.”
- NO INCREASE TO AN UNLIMITED AMOUNT ANNUALLY THAT CONSISTS OF AT LEAST 80%
 - The Santa Cruz Port District has neglected the North Harbor Sediment for 3 dredging seasons. Some of that material could have been taken inland for disposal. Why wasn't it?
 - The Santa Cruz Port District lacks the proper dredging equipment to efficiently dispose of the North Harbor Sediment. The large entrance channel dredge is being used for the disposal of the upper harbor material, which limits the time annually it can spend clearing the entrance channel.
 - The Santa Cruz County Department of Health Services has tested the entrance channel sediments after North Harbor Dredging (2004) and found levels of cadmium, chromium and copper that were significantly higher than background levels. It was also found that arsenic and lead exceeded human health standards. Shouldn't entrance channel testing be done before beach or near shore disposal? Is it safe for swimmers to be in the water during or after North Harbor Disposal?

If you have ever visited the Twin Lakes/Harbor beach you know that it is a jewel, and it cannot be

replaced. Its future remains uncertain if the Santa Cruz Port District is allowed to increase the amount of North Harbor sediment annually disposed.

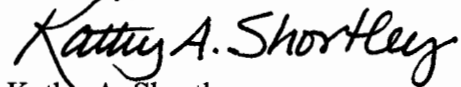
Many of the agencies are relying on the EPA to direct their actions; however, EPA doesn't have the best track record when it comes to environmental and public health issues.

Please play it safe and just say no!

I would also like to request that the public be given more time in the future to respond to such major issues as these. I had little time to prepare and had much more to say.

Thank you for time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Kathy A. Shortley". The signature is written in a cursive style with a large, stylized 'K'.

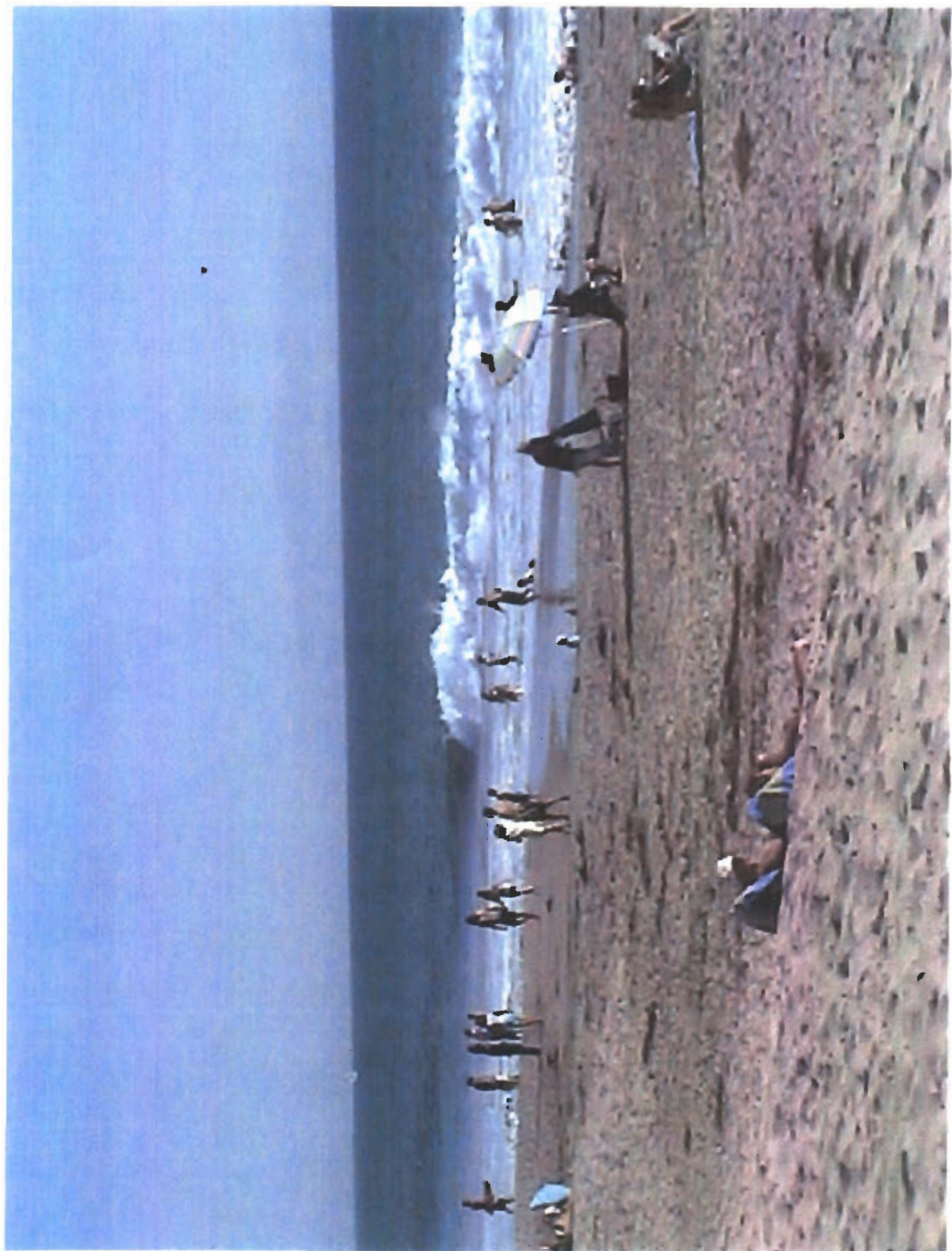
Kathy A. Shortley

P.O. Box 3625

Santa Cruz, CA 95063



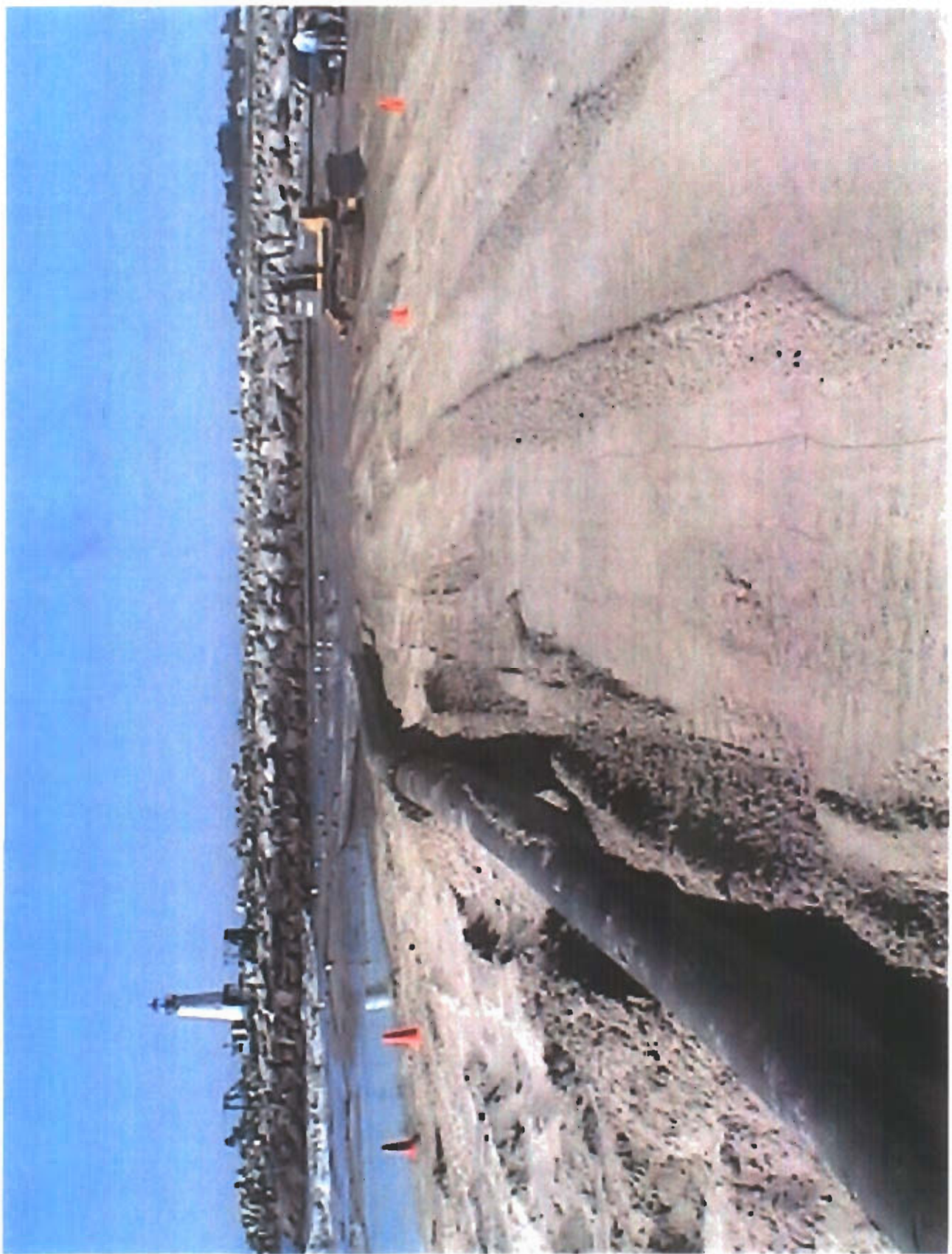
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